

and one that the federal government should not be too shy of using if other avenues for improvement of the performance under the agreement cannot be taken. A private member's bill recently introduced in the House of Commons proposes that the federal government be able to do just that, provided that the proposal receives the approval of at least two-thirds of the province accounting for at least 50 percent of the Canadian population.²⁵

Constitutional Options

Others, clearly frustrated, have suggested introducing a new binding authority, such as the Trade Council of the European Union and the Interstate Commerce Commission in the United States, capable of enforcing free internal trade. Thus, OWEC has proposed a Canadian Internal Trade Commission (CITC), which would be "an economic tribunal with judicial powers derived from the Constitution and independent of governments" to regulate all trade and commerce within the country.

Here the doubts expressed by the Macdonald Commission as to the possibility of enforcing full free trade through constitutional provisions alone come to mind.²⁶ But the commission itself also suggested that following a few years' experiment with an administrative agreement (such as the AIT), some of its provisions, if they were seen as functioning well, could be entrenched in the constitution.

CONCLUSION

In short, the story of the AIT so far, at least with respect to its provisions regarding non-discrimination between provinces, transparency, and dispute settlement, has been one of timid implementation and lack of reporting and dissemination of information concerning the steps taken by governments or private parties in order to ensure its implementation. If one considers that the agreement, as written, and especially in its general principles, strikes an appropriate balance between the need and responsibility of governments to strengthen the economic union on the one hand, and the legitimate differences that may occur from time to time in a wide range of policy areas under provincial jurisdiction on the other, one must view any significant deviation from the agreement as being detrimental to the well-functioning of Canada's economic union.

In order to speed up the pace of eliminating discriminatory barriers, and avoid the emergence of others in the future, Canadian governments should first ensure that all the information which they promised to make public when they signed the AIT be made available. In general, the agreement should be given a greater public profile, for example, by reporting on the progress of

trade disputes. This should be accompanied by a strengthening of the AIT's institutional structure, in particular a greater monitoring and reporting role for the secretariat and streamlined voting procedures, with a view to accelerate the pace of outstanding negotiations. As further steps, all the signatory governments should consider stronger legislation than is currently in place to implement key aspects of the agreement. If these steps do not result in a full implementation of the AIT within a reasonable period of time, the federal government should consider using its constitutional powers to ensure that this unanimous agreement among Canadian governments get fully implemented in practice.

NOTES

1. From this point on in the chapter, the word "province" will refer to both provinces and territories, unless otherwise indicated.
2. In this chapter, the words "parties" (to the agreement), "signatories" (to the agreement) and "governments" are used interchangeably, unless otherwise made clear.
3. See Thomas J. Courchene, "Analytical Perspectives on the Canadian Economic Union," in *Federalism and the Canadian Economic Union*, ed. Michael J. Trebilcock et al. (Toronto: Ontario Economic Council, 1983), in particular pp. 95-96; and Canada West Foundation, *The Canadian Common Market: Interprovincial Trade and International Competitiveness* (Calgary: Canada West Foundation, 1985).
4. Thus, the Canadian economic union allows enterprises to extend their operations from their local base without having to worry about the intricacies of a foreign legal system, possible protectionist actions under "trade remedy laws," the need to document the origin of their products, or the difficulties of enforcing judgements against foreign debtors. That such a trading facility particularly benefits small- and medium-sized businesses is shown by data collected by the Bureau de la Statistique du Québec, according to which 2,513 establishments in that province exported goods to other destinations in Canada in 1990, while 1,610 produced a roughly comparable dollar amount of exports to foreign countries. See, the Canadian Chamber of Commerce, *The Agreement on Internal Trade and Interprovincial Trade Flows: Building a Strong United Canada*, September 1996.
5. On this point, Michael A. Goldberg and Maurice D. Levi argue that "the accidental [i.e., provided by the political system] weights in the Canadian portfolio of provinces/territories provide an economic outcome that is close to the efficient frontier which designates economically efficient combinations of returns and risks, where 'return' relates to economic growth, and 'risk' to the volatility of economic growth," in "Growing Together or Apart: The Risks and Returns of Alternative Constitutions of Canada," in *Canadian Public Policy/Analyse de Politiques* 20, 4 (1994):341.

6. Notably the Western Agreement on Procurement in 1989, the Maritime Procurement Agreement in 1990, and the Intergovernmental Agreement on Beer Marketing Practices and Intergovernmental Agreement on Government Procurement in 1991.
7. See Robert Howse, *Securing the Canadian Economic Union: Legal and Constitutional Options for the Federal Government*, Commentary no. 81 (Toronto: C.D. Howe Institute, June 1996), pp. 4-6.
8. Such as, for example, a requirement that firms bidding on a federal government construction contract in a province be located in that province.
9. "Workers" is defined under the agreement so as to include virtually all persons in an employed situation: "an individual, whether employed, self-employed or unemployed, who performs or seeks to perform work for pay or profit" (Article 713).
10. *Agreement on Internal Trade, Chapter 7 — Labour Mobility: Annual Report 1995-96*, retrieved from Human Resources and Development Canada internet site, 4 July 1996, and "Government of Canada Announces Support to Facilitate Interprovincial Labour Mobility," Human Resources Development Canada press release, 12 February 1997.
11. The definition of agricultural and food goods for the purpose of this chapter excludes fish products and alcoholic beverages.
12. The last sentence of Annex 902.5 illustrates this perfectly: "The dates for the adoption of recommendations concerning imitation dairy products and butter blends are to be determined by the Ministers."
13. See Konrad Yakabuski, "Quebec Courts Margarine War," *The Globe and Mail*, 14 October 1997, p. B1.
14. See Robert Howse, "Between Anarchy and the Rule of Law: Dispute Settlement and Related Implementation Issues in the Agreement on Internal Trade," in *Getting There: An Assessment of the Agreement on Internal Trade*, ed. M. Trebilcock and D. Schwanen (Toronto: C.D. Howe Institute, 1995), pp. 178-90.
15. *Ibid.*, pp. 183-86.
16. See Graham F. Parsons and Peter L. Arcus, *Interprovincial Trade and Canadian Unity* (Regina and Calgary: Organization of Western Economic Cooperation, 1996), p. 5; and in a news release accompanying the study.
17. See Alan Toulin, "Provincial Trade Pact Starting to Crumble," *The Financial Post*, 14 September 1996, p. 1.
18. See Andrew Coyne, "What Could the Premiers Deny Quebec That They Haven't Already Destroyed?" *The Globe and Mail*, 28 August 1995; and Armand de Mestral, "The Canadian Agreement on Internal Trade: A Comment," in *Getting There*, ed. Trebilcock and Schwanen, pp. 95-97.
19. Parsons and Arcus, *Interprovincial Trade and Canadian Unity*; and the Canadian Chamber of Commerce, *The Agreement on Internal Trade*.

20. In an earlier paper, I suggested that such a "qualified majority" could comprise 19 (two-thirds) of 28 provincial votes distributed as follows: Quebec and Ontario, four each; Alberta and British Columbia, three each; Prince Edward Island and the (soon three) territories, one each, and all other provinces, two votes. See "Open Exchange," in David M. Brown, Fred Lazar and Daniel Schwanen, *Free to Move: Strengthening the Canadian Economic Union*, Canada Round series no. 14 (Toronto: C.D. Howe Institute, 1992).
21. As proposed by Howse in "Between Anarchy and the Rule of Law," p. 186.
22. See Robert Howse, *Securing the Canadian Economic Union: Legal and Constitutional Options for the Federal Government*, Commentary no. 81 (Toronto: C.D. Howe Institute, 1996).
23. *Ibid.*, p. 5.
24. Parsons and Arcus, *Interprovincial Trade and Canadian Unity*, p. 10.
25. Canada Bill C-203, *An Act to Amend the Agreement on Internal Trade Implementation Act*, Mr. Benoit, First Reading, September 1997.
26. Canada, Royal Commission on the Economic Union and Development Prospects for Canada (MacDonald Commission) *Report* (Ottawa: Minister of Supply and Services, 1985), vol. 3, p. 137.

Green Harmonization: The Success and Failure of Recent Environmental Intergovernmental Relations

Patrick Fafard

L'inter gouvernementalisme a été une des caractéristiques définissantes des politiques environnementales canadiennes dans les années '90. Pendant les dernières années, les deux niveaux de gouvernements ont dévoués du temps et des efforts considérables à préparer des ententes intergouvernementales pour régler et restructurer leurs rôles et responsabilités respectives à l'égard de politique environnementale. À ce jour, cet effort n'a produit que de modestes résultats. Ce modeste succès est attribuable à une combinaison de facteurs sociaux, institutionnels et d'empiétement. Cependant, il faut porter attention tant aux succès qu'aux échecs. Même si rejetée par les Ministres, l'Entente [Environmental Management Framework Agreement (EMFA)], est un document compréhensif qui identifie les possibilités de politiques nationales et de prise de décision nationale d'où national n'était pas synonyme de fédéral. Les forces et les faiblesses de la EMFA sont importantes pour d'autres efforts à réaliser des ententes intergouvernementales compréhensives. En fait, l'expérience récente du domaine de la politique environnementale suggère que seuls des changements marginaux peuvent être accomplis par des négociations intergouvernementales et que de telles négociations posent d'importantes questions au sujet de la responsabilité démocratique.

INTRODUCTION

In their ongoing search for a new constitutional and institutional architecture, Canadians have debated a variety of changes to both the constitutionally entrenched division of powers as well as to the management of the existing allocation of responsibilities between Ottawa and the provinces. However, in recent years interest in formal constitutional change has declined and the debate has shifted to better management of the federation. The working assumption is that because the constitution cannot be easily amended, then

changes to the federal bargain should be achieved by intergovernmental agreement. Thus, while formal constitutional change was the order of the day in the 1980s, in the 1990s the focus has shifted to intergovernmental relations and an effort to reinvent the cooperative federalism of the 1960s.

This renewed interest in intergovernmentalism has been evident in recent interactions between Ottawa and the provinces across a range of policy fields.¹ For example, intergovernmentalism is an integral part of many of the current debates with respect to social policy and the social union, for example, the deliberations leading to reform of the Canada and Quebec Pension Plans, and the more recent efforts to mount a new national social program to combat child poverty. Similarly, intergovernmentalism has been the hallmark of labour market policy and has led to a series of federal-provincial agreements shifting responsibility for labour market training from Ottawa to the provinces.²

Although it has not received as much public attention, intergovernmentalism has been, and continues to be, the hallmark of environmental policy in Canada. The most recent burst of intergovernmental cooperation began with the Statement on Interjurisdictional Cooperation in 1990, through the negotiations leading to the rejected Environmental Management Framework Agreement (EMFA), and finally to the Canada-Wide Accord on Environmental Harmonization, which was agreed to in principle by environment ministers in the fall of 1996. In fact, the pattern of intergovernmental negotiation with respect to environment policy and the resulting draft agreements are potentially as significant as anything being done in other policy fields. The central argument of this chapter is that the recent patterns of intergovernmental relations with respect to environmental policy deserve scrutiny by those who seek clues as to the more general patterns of reform to the Canadian federal bargain. And what is more, the significance of environmental intergovernmentalism lies both in the successes *and* the failures of the recent past.

The next section offers a short overview of recent intergovernmental negotiations with respect to environment policy, with particular emphasis on the EMFA and the more recent Canada-Wide Accord. The central message here is that governments have not been particularly successful in coming to a meaningful reallocation of federal and provincial responsibilities. The next part of the chapter then seeks to explain these trends and in particular, the weakness of the Canada-Wide Accord. The chapter then turns to a more detailed discussion of the EMFA. Although ministers rejected this agreement in 1996, it deserves careful scrutiny. This agreement was an innovative effort to distinguish between federal, provincial, and *national* policies and programs. The first two are the exclusive responsibility of the two orders of government while the latter, national policies, would have been the joint responsibility of Ottawa and the provinces acting in concert. The importance of the EMFA lies in the fact that, although the agreement was rejected, it did reintroduce into our collective lexicon the concept of national policies which are not under the

exclusive jurisdiction of the federal government. The conclusion of the chapter offers some observations about the implications of a failed EMFA and a weak Canada-Wide Accord for the prospects of intergovernmental cooperation in other policy fields.

RECENT TRENDS

The question of the roles and responsibilities of Ottawa and the provinces with respect to the environment has received a great deal of attention in recent years. One of the reasons for this is a fair degree of ambiguity concerning the constitutional basis for federal and provincial activity in the areas of pollution control, ecosystem management and resource conservation. Of course, the environment is not included in the lists of powers assigned to each order of government according to the *Constitution Act, 1867*. Nevertheless, the basis of provincial environmental legislation is relatively uncontroversial. Provinces legislate in the area of the environment based on their constitutional responsibilities for such things as local works and undertakings, property and civil rights, and the management of natural resources, the latter confirmed by the 1982 resource amendment to the *Constitution Act, 1867*. For its part, federal environmental legislation is based on varying combinations of the federal trade and commerce power, federal responsibility for the fishery and the conduct of international relations, and the federal power to legislate on the criminal law.³

Although both orders of government have the constitutional jurisdiction to act, on balance provinces have been more aggressive in asserting their jurisdiction. Whereas provincial governments have been keen to assert their authority, particularly with respect to the management of natural resources, the federal government has been comparatively timid and has not chosen to assert or even test the full extent of its constitutional authority.⁴ The major exceptions have been when public concern about the environment has provided a strong incentive for federal action. This occurred most recently in the late 1980s when Ottawa enacted a series of new amended environmental statutes. This does not mean, however, that the two orders of government have not come into conflict with one another on matters of environmental policy. On the contrary, there is significant overlap between Ottawa and the provinces in several areas, notably with respect to environmental assessment (EA). Indeed, rationalization of "who does what" with respect to EA has proven to be one of the major reasons governments have sought to develop a new allocation of responsibilities with respect to environmental policy writ large.

TOWARD THE ENVIRONMENTAL MANAGEMENT FRAMEWORK AGREEMENT

Given this relative constitutional ambiguity, since the environment became an area of government activity in the late 1960s the relationship between Ottawa

and the provinces with respect to environmental policy has been marked by periods of cooperation, conflict, and unilateral action.⁵ Since the early 1990s, however, cooperation would *seem* to be the order of the day. This period of cooperation is in marked contrast with the conflict that marked the late 1980s and early 1990s with respect to environmental assessment and the development of the *Canadian Environmental Protection Act*.⁶

What appears to be cooperation may, however, be a combination of a variety of relationships and very different patterns of intergovernmental relations.⁷ The intensive efforts of the past several years to achieve a comprehensive environmental management agreement have not produced very much more than a rather general statement of intent and best efforts. The basis for the current state of affairs and what might explain the lack of progress are worthy of some detailed attention.

In November 1993 the Canadian Council of Ministers of the Environment (CCME) met as part of an annual cycle of twice-yearly meetings.⁸ At this particular meeting ministers agreed to make harmonization a top priority and directed their officials to work on a new "Environmental Management Framework for Canada." Over the next several months a Harmonization Task Group was established, bringing together officials from all provinces except Quebec. The task group developed a paper setting out a series of general principles to guide harmonization, which was presented to the CCME at its next meeting in May 1994. Ministers agreed with the general thrust of the paper and it was released for public comment.

Several months later the task group was dissolved and replaced by a more elaborate Lead Representatives Committee (LRC). The LRC took the lead in drafting what was to become the Environmental Management Framework Agreement (EMFA) and the 11 schedules that accompanied the agreement. The operating procedures of the LRC are notable because they reflect recent trends in intergovernmental negotiations in Canada where the emphasis is on transparency, public participation, and, unfortunately, considerable complexity. For example:

- The LRC brought together all provinces, including Quebec, and had an independent chairperson, an official from the Government of Alberta.⁹
- The LRC created a rather elaborate structure to assist it in developing an agreement. The LRC met monthly in different parts of the country. Fourteen subcommittees were created to work on different aspects of the main text and the schedules, and as many as 125 officials worked directly on the development of the agreement. This may explain why the text that was eventually produced was very complex and the agreement and the 11 schedules combined for a document of over one hundred pages.

- Early on, the Harmonization Task Group created a National Advisory Group (NAG) of 16 people from environmental non-governmental organizations (ENGOS), business, industry, municipalities, and universities. The NAG provided advice and feedback to the task group and later the LRC with respect to public consultation and the substance of the draft agreements.
- The work of the LRC was supplemented by public consultations. Individual members of the LRC and other officials met with stakeholders on request to discuss the work of the LRC and the development of the EMFA. Several public workshops were held to solicit input from stakeholders and interested parties. Also, the CCME Secretariat made extensive use of the Internet to disseminate draft copies of the EMFA and invite comments from stakeholders and the general public.

In other words, by the usual standards of intergovernmental negotiating, the development of the EMFA was a remarkably open and consultative process. However, these were intergovernmental negotiations about *environmental* policy. As a result, the process was also judged by the standards of recent environmental policymaking. In this regard, the EMFA process was found wanting.¹⁰

By December of 1994 a draft of the EMFA and four schedules were ready and ministers agreed to release the documents for discussion. Two months later, in February 1995, an invitational multistakeholder workshop was convened in Toronto. Approximately 55 people representing business, industry, environmental non-governmental organizations (ENGOS) and other groups came together to discuss and critique the draft agreement. Although industry representatives were either silent or generally supportive of the draft agreement, other participants, notably representatives of the environmental movement expressed a variety of concerns. For example, ENGOS were concerned that governments had not demonstrated that duplication and overlap existed in federal and provincial environmental regulations even though it was the problem that the EMFA was designed to address. Similarly, ENGOS were concerned that the EMFA would mean that the federal government would abandon its traditional roles with respect to environmental protection and that the agreement represented a *de facto* constitutional amendment.¹¹

The consultation process was designed to feed into a revision of the draft EMFA for presentation to ministers at the next meeting of the CCME in May 1995. However, by this time the reform process was in jeopardy. The federal minister of the environment, Sheila Copps, was troubled by the concerns expressed by environmentalists and, in some cases, by industry. This was particularly the case with respect to issues relating to environmental assessment, an area that had been the subject of considerable intergovernmental

wrangling in the past. As a result, a revised draft of the EMFA was not released after the May ministerial meeting pending further revisions and clarifications. At the October 1995 meeting of the CCME a revised draft and ten of the eleven schedules were released for public comment. The schedule dealing with EA was, perhaps not surprisingly, held back for further revisions.

In early 1996 environment officials held two more workshops in Edmonton and Toronto to solicit comment and feedback on the revised draft of the EMFA and the ten schedules. Strong criticism of the agreement was again voiced by ENGOs and others, including representatives of Aboriginal Peoples who were concerned that they had not been consulted in the drafting of the agreement and they were not going to be parties to a new national framework for environmental policy in Canada. By this time the draft EMFA was all but dead. When the CCME met in May 1996 to consider a final revised draft of the agreement, ministers rejected the document and, with it, an ambitious recasting of federal and provincial roles with respect to environmental management. Instead, ministers instructed their officials to draft a new and simpler agreement. Interestingly enough, all jurisdictions, including Quebec, agreed to participate in the new process.

A CANADA-WIDE ACCORD ON ENVIRONMENTAL HARMONIZATION

Notwithstanding the failure of the EMFA, during the spring and summer of 1996 there was continuing pressure for some sort of agreement with respect to federal and provincial roles regarding the environment. Some of this pressure was coming from within the federal government itself which had embarked on a major effort to recast the division of powers and shift responsibility to the provinces in key areas, including the environment. For example, after being named minister of the environment in February 1996, Sergio Marchi was later told by the Prime Minister's Office to secure an agreement with the provinces with respect to environmental management.¹²

Building on this pressure from the top and the months of work on the EMFA, officials moved quickly and drafted a new Canada-Wide Accord on Environmental Harmonization. Drafts of the accord were once again released for public consultation in August and September 1996. The text of the accord is quite vague and represents a best-efforts approach on the part of Ottawa and the provinces. At the same time, ENGOs again expressed concerns with the general thrust of the accord, once again raising concerns that the accord is designed to address a problem, overlap and duplication, that either does not exist or, may in fact be desirable.¹³ Notwithstanding such concerns, Ottawa and the provinces forged ahead and, in November 1996, environment ministers gave agreement in principle to the accord. Ministers also released drafts of two sub-agreements dealing with Inspections and Standards. Once again, environmental assessment proved to be a sticking point. Ottawa and the provinces

could still not agree on a rationalization of activity with respect to EA. In the absence of anything resembling consensus, ministers could only agree to release a discussion paper to once again elicit public comments.

The accord, in marked contrast to the EMFA, is only four and a half pages long and, similar to other intergovernmental agreements, does not bound the parties in any meaningful way and is hortatory rather than regulatory.¹⁴ For example, pursuant to the accord, the federal and provincial governments agree that their environmental management activities will reflect a set of 13 principles. These principles are very general and include the proposition that pollution prevention is the preferred approach to environmental protection and that "working cooperatively with Aboriginal people and their structures of governance is necessary for an effective environmental management regime."¹⁵ As was true for the EMFA, the substance of the Canada-Wide Accord, such as it is, lies in the sub-agreements. In the accord, governments state their intention to conclude such sub-agreements "on all areas of environmental management that would benefit from Canada-wide coordinated action."

Over the next several months officials forged ahead but, in contrast to the development of the EMFA, the process was somewhat less public and moved much more quickly. Attention focused on the draft sub-agreement on standards and the sub-agreement on environmental assessment. For example, in February 1997 a first draft of the EA sub-agreement was released for public comment and a revised draft was released in late March 1997. Similarly, in December 1996 the CCME Secretariat released a document with more specific details regarding the standards sub-agreement. The new document outlined a process for determining how standards might be set for a variety of substances including ground level ozone, dioxins and furans, benzene in air, and the remediation of sites contaminated with petroleum products. The CCME Secretariat convened a workshop in April 1997 to discuss Canada-wide standards in anticipation of final ratification of the sub-agreement by ministers at their meeting in May 1997.

Alas, the long-awaited May 1997 meeting of the CCME was cancelled because of the federal election. As a result, the decisions that were to have been made at that meeting were put off to the next scheduled meeting of the Council in the fall of 1997. However, the federal election also meant the arrival of a new federal minister of the environment, Christine Stewart, whose general orientation to decentralization is not clear. Similarly, the election meant the death of legislation before Parliament that would have significantly amended the *Canadian Environmental Protection Act*. These events have combined to put the whole process of environmental policy harmonization in abeyance as a new bill amending CEPA is drafted and the new minister decides where she wants to go with respect to harmonization. Thus, it is far from certain that there is still sufficient political will and momentum to allow ministers to ratify the Canada-Wide Accord.

In summary, the story of environmental federalism over the past several years has been one of thwarted ambition, varying degrees of consultation and openness, and a seemingly irresistible pressure to get some sort of agreement, however vague and unrealistic. In contrast to the intergovernmental conflict of the late 1980s and early 1990s with respect to environmental policy, the last several years have been marked by a considerable degree of cooperation, even if this cooperative spirit has not always resulted in a real change to the roles and responsibilities of Ottawa and the provinces. What might explain this shift in the overall tenor of federal-provincial relations with respect to the environment? The next section offers some possible explanations.

EXPLAINING RECENT EVENTS¹⁶

In seeking to understand the recent pattern of intergovernmental environmental relations, a range of societal, institutional and spillover factors help explain the relative lack of success in forging a new division of federal and provincial roles and responsibilities for environmental protection. The working assumption is that the patterns can be largely explained with reference to factors that are not unique to environmental issues. To go beyond this assumption is beyond the scope of this chapter.¹⁷

SOCIETAL FACTORS: PUBLIC OPINION

First, and perhaps most importantly, what happens with respect to environmental policy and intergovernmental relations (and indeed all intergovernmental relations) is the product of much more than the interactions among governments. The extent to which Ottawa and the provinces are able to harmonize environmental policy and programs is much influenced by a range of non-governmental or societal factors.

Contrary to the pattern of the late 1980s and early 1990s, the most important of these societal factors is no longer public opinion. As has been amply documented elsewhere, interest in, and concern about, the environment and environmental protection has fallen off in recent years following the green wave of the later 1980s and early 1990s. The recession of the early 1990s and the continuing levels of high unemployment have led to a situation where environmental issues are deemed less important than economic ones. This is particularly evident in British Columbia where a trade-off has been constructed pitting jobs against the environment and where concerns about jobs outweigh any concerns about the sustainability of forestry practices. More generally, in the January 1997 National Angus Reid/Southam News Poll, in response to an open-ended question about the most important issues for Canada today, only 4 percent of respondents identified the environment as an important issue.¹⁸

Given the relative lack of public concern about the environment, there is less public pressure for governments to do something substantive about the environment and environmental protection. This, in turn, allows governments and industry to redefine issues to emphasize competitiveness and jobs. Moreover, the relative lack of public concern makes it harder for ENGOs and others who oppose devolution of responsibility from Ottawa to the provinces.

However, it is easy to overstate the decline in public concern about environmental issues. Notwithstanding the polling results cited above, it would appear that there is latent public concern about the environment and environmental protection. Although respondents to polls are less likely to identify the environment as a priority issue, when prompted they will express high levels of environmental concern.¹⁹ Thus, while public opinion, notably public concern about the environment, no longer drives the agenda of environmental policy, governments cannot simply ignore the issue.

Moreover, latent public concern about the environment and environmental protection does have an intergovernmental dimension, particularly when the issues are recast or linked to control over natural resources. Generally speaking, there is strong public support for continued *federal* regulation of environmental hazards. However, if the issues are redefined, not as matters of environmental policy but rather of natural resource development, the pattern shifts. In western Canada, in particular, the general public favours a predominant *provincial* role in the management of natural resources. Thus, provincial governments, if they are to appeal to public opinion, need to recast environmental issues as issues of economic development or control over natural resources. On these latter issues provinces are more likely to enjoy strong public support.

All of this should not be interpreted to mean that the public cares particularly about jurisdiction over environmental policy. On the contrary; despite a degree of latent concern and a public preference for provincial regulation of natural resources, for the time being anyway environmental policy does not register as a key issue for the general public. As a result, governments have relatively free reign to do what they want with respect to reallocating responsibility for the environment. In effect, jurisdiction over environmental regulation is not an issue that is likely to garner much public attention, at least not until the next wave of widespread public concern about environmental protection.

SOCIETAL FACTORS: ORGANIZED INTERESTS²⁰

The strengths and weaknesses of the environmental movement are another important factor in explaining the recent pattern of environmental intergovernmental relations. It is clear that ENGOs do not have quite the same influence they did in the later 1980s and early 1990s. Once again, the backlash

against Greenpeace's efforts to change forestry practices in British Columbia is a good example of this. More importantly, in recent years ENGOs have had fewer resources with which to lobby effectively. This is an even bigger problem when the issues at hand get caught up in the web of intergovernmental relations and effective lobbying requires intervening with several governments.

Yet the major ENGOs have done a very good job of marshalling their resources to fight the harmonization efforts of the two orders of government. The Canadian Environmental Network (CEN), with the strong support of the Canadian Institute for Environment Law and Policy (CIELAP) and additional analysis provided by the Canadian Environmental Law Association and the Canadian Environmental Defence Fund, led the way with several highly critical and detailed critiques of the harmonization process and both the EMFA and the more recent Canada-Wide Accord.²¹ For example, submissions prepared by CIELAP argued repeatedly that the two orders of government had not demonstrated that harmonization is necessary or desirable and that the changes proposed under the rubric of harmonization would weaken rather than strengthen the environmental management regime in Canada. Canadian ENGOs have also been adept at ensuring that sympathetic media have tracked the development of the harmonization process. Thus, *The Toronto Star*, and in particular, columnist Rosemary Speirs, have run several items critical of the harmonization process.²²

While Canadian ENGOs have not been successful in derailing the harmonization process altogether, they have been able to mount a serious enough critique to slow the process down. The ENGO critique has also contributed to a debate within the federal government on the merits of devolving more responsibility for the environment to provincial governments (this debate is further described below).

Conversely, organizations representing business and industry have not elaborated a strong position with respect to harmonization.²³ Although the elimination of overlap and duplication of environmental regulations is a long-standing priority for Canadian business groups, particularly resource industries, associations representing the sector have not used the harmonization process as a vehicle for pressing their claims. There are several possible explanations for this.²⁴

First, it is likely that key resource industry associations are themselves divided on which order of government should do what. Firms that operate in only one province will have developed cooperative relationships with their provincial government and will likely support greater provincial responsibility for environmental regulation. Similarly, many firms, irrespective of size, perceive provincial governments to be more amenable to a resource exploitation agenda as compared to the federal government where Environment Canada retains some influence and resource development is more likely to be balanced

against environmental concerns. Conversely, most of the major resource development companies in Canada have operations in several provinces. For these firms, different provincial regulatory structures are difficult to manage and they sometimes prefer to deal with a single federal regulatory authority. Thus, when many companies of different size and outlook come together in a single industry association, it makes it harder for the association to agree on the merits of federal versus provincial environmental regulation.

Second, although Ottawa and the provinces have been preoccupied with efforts to harmonize environmental responsibilities, harmonization is not a high priority for regulated companies. The latter are much more likely to be interested in pursuing various forms of deregulation, voluntary and negotiated compliance, and experiments with alternatives to command and control regulatory practices. Thus, the harmonization exercise is, for many firms, an interesting but relatively unimportant part of their overall relationship with governments.

Finally, harmonization has not been a big issue for business and industry interests because, irrespective of which order of government is responsible for environmental regulation, industry associations generally enjoy good working relationships with both orders of government. In the middle and late 1990s, in marked contrast to the late 1980s, economic development and jobs are a very high priority for governments at all levels. As a result, both Ottawa and the provinces are generally quite receptive to claims made by industry with respect to the competing goods of economic development and environmental protection. Either governments accept the proposition that one can have both public goods simultaneously, or they opt for jobs over the environment. As a result, for many firms, which order of government is primarily responsible for environmental policy is of little consequence. Many companies understand that economic development is very important and that resource exploitation will remain an integral part of any and all economic development strategy by either order of government.

INSTITUTIONAL FACTORS: DECISION RULE

A range of institutional factors are also important determinants of the overall pattern of federal-provincial environmental policy cooperation, even if little real reform has been achieved. For example, the Council of Ministers of the Environment has played a key role in the evolution of federal-provincial relations with respect to the environment. In marked contrast to several other policy fields, environment ministers meet twice a year, have a record of achievement (and failure²⁵), are served by a national secretariat, and have developed considerable trust ties, particularly at the level of officials.²⁶ In those areas with a relatively low political profile, the CCME has made considerable progress.²⁷

This pattern of intense interaction and the support of the national secretariat were key in the development of the Environmental Management Framework Agreement. However, recent cuts to the budget and staff of the secretariat may make similar intensive negotiations more difficult in the future.

Notwithstanding the incremental successes of the Council, the CCME has been unable to craft a significant amendment to the roles and responsibilities of the two orders of government. This is partly explained by the decision rule used by the Council. As with so many other intergovernmental bodies in Canada, the decisions of the CCME require the approval of all the members of the Council. As has been demonstrated elsewhere, a unanimity rule usually has the effect of strengthening the status quo and, by extension, those who will benefit from little or no change to the status quo.²⁸ In the case of decentralization and devolution, a unanimity rule favours the federal government or at least those ministers and officials who are keen to minimize a transfer of power and authority to the provinces.

INSTITUTIONAL FACTORS: FEDERAL LEADERSHIP

A unanimity rule also gives the federal government added influence since the federal government can block an initiative and argue that it is acting in the best interests of the country as a whole in marked contrast to any single province. This is particularly true in the case of environment policy where ENGOs and the general public look to Ottawa to exercise leadership and direction. As outlined above, the federal minister of the environment did try and slow down the deliberations of the environmental assessment schedule of the EMFA. More telling, the collapse of the EMFA is likely the result of, among other things, a desire by the federal government to not be seen to be "giving away the store" with respect to environmental policy. Because the federal Cabinet during this period was divided on where and how much power to devolve to the provinces,²⁹ this created an opportunity for the federal minister of the day, Sheila Copps, to pull back and limit the extent to which the federal government would retreat from regulating environmental matters.

SPILOVER: NEW PUBLIC MANAGEMENT

A third set of factors help explain the preoccupation of the CCME to "harmonize" environmental policy while at the same time being unable to make significant progress on harmonization. As alluded to earlier, the making of environmental policy does not take place in a vacuum and is subject to other non-environmental agendas. Here I want to very briefly discuss two — the introduction of a new style of public management and efforts aimed at a non-constitutional renewal of the federation.

As has been well documented elsewhere, what governments do and how they do it has been much debated over the past decade under the general heading of "reinventing" government, or less dramatically, what others have called "the new public management."³⁰ The reform effort includes a preoccupation with streamlining operations, integrated service delivery, greater efficiency, and a stronger focus on "clients" or "customers." The reforms also involve identifying those activities and policy areas that are part of the core activities of a given order of government and those activities that can or should be devolved to another government or to the private sector. In the case of the federal government, one of the results of the reforms has been a move away from service delivery and/or experiments in "alternative service delivery" which often involve partnerships with other actors including, in some cases, provincial governments.³¹

These trends have several implications for the conduct of intergovernmental relations, and in particular, for the pattern of intergovernmental relations with respect to environmental policy. There is, for example, considerable pressure to pursue various forms of self-regulation,³² or giving provincial inspectors the responsibility for enforcing federal regulations. Similarly, under a new public management ethos, regulation should be simpler and/or there should be a "single window" for regulated industries that deal with government. Thus, regulatory simplification and the search for just such a single window have been a central part of the harmonization exercise of the past several years.³³

Unfortunately, establishing such single windows has proven quite difficult and they are not likely to be forthcoming as a result of formal, multilateral intergovernmental agreements. Although simpler more functional bilateral agreements are possible,³⁴ full-blown harmonization under the rubric of administrative and managerial reform is much harder to achieve. Much of the difficulty stems from the fact that the efforts to reshape public administration must contend with some basic realities of Canadian government, including federalism, and a strong tendency on the part of both governments and affected interests to resist major change. Reform of the administrative state is not simple or straightforward. In many cases, reform initiatives are undesirable or controversial. For example, "the new public management" all too often becomes nothing more than the application of private sector management techniques to the public sector. Such reforms conflict with the basic realities of responsible government, divided jurisdiction, and the need to manage public goods.³⁵ Thus, it is perhaps not surprising that, although the CCME has sought to harmonize environmental regulation in Canada, the road to harmonization has been long and bumpy. Harmonizing or rationalizing environmental policy and programs involves more than simply turning activities and responsibilities over to provincial governments or to the private sector in the name of administrative and regulatory reform.

SPILLOVER: RENEWAL OF THE FEDERATION

Notwithstanding the agenda for change in Canadian public administration, there is a similar if not more powerful agenda for change in the constitutional division of powers and the allocation of responsibility to the two orders of government. The process of "renewal of the federation" also has spillover effects on environmental harmonization.

Reform of the federation had been a long-standing priority of the Chrétien government, initially under the leadership of Marcel Massé. Moreover, some success had been achieved, for example in the area of pension reform where an elaborate and joint federal-provincial consultation exercise eventually culminated in changes to the Canada/Quebec pension plan. In the Speech from the Throne of February 1996, the reform effort was given renewed emphasis and the federal government promised to pursue a number of initiatives in response to the unsettling results of the November 1995 Quebec referendum. A new arrangement on environmental policy was part of the promised reform package.³⁶ Similarly, the issue of environmental harmonization was raised at the September 1995 Annual Premiers' Conference subsequent to the stalling of the process in May of that year. Following the meeting, the premiers wrote a letter to the prime minister requesting that the harmonization project be revived.³⁷ This focus on intergovernmental relations and on environmental policy continued through 1996. When the prime minister and the premiers met in June at a long-awaited First Ministers' Conference, they directed their environment ministers to make progress in harmonization by the November 1996 meeting of the CCME.

Thus, there has been considerable pressure from both the prime minister and the premiers encouraging their respective environment ministers to make a deal with respect to harmonization. A deal on environmental policy harmonization would serve as a good example of how the federation and the division of powers can be reformed and amended. However, although there has been pressure from the top, this has not translated into strong leadership by the federal government. In order to explain this failure it is useful to contrast the case of environmental policy with that of policies relating to labour market training and development.

In the case of training, Ottawa and the provinces have been able to negotiate a process whereby the federal government will transfer responsibility for the design and delivery of labour market training to those provinces that want to exercise these powers. Agreements have been signed with eight provinces, including Quebec.³⁸ As with environment, the reform agenda has been driven heavily by pressure from the top.³⁹ However, unlike environment, the progress on training was the result of: a very direct link to a broader national unity agenda, strong leadership from the federal minister, most recently Pierre

Pettigrew, and a lack of sustained opposition from interest groups outside the federal government.

Few, if any of these conditions apply to a putative agreement on environmental policy harmonization. First, the federal government was (and continues to be) unable to take the lead on environmental policy harmonization as a result of a sharp split between those who would decentralize power to the provinces and those who argued that the federal government should retain a leadership role in key policy areas.⁴⁰ This has created resistance in a number of policy fields including environment, an area where the federal government can legitimately claim a leadership role. The split is less significant when it comes to labour market matters because control over manpower is a long-standing demand from Quebec. Any losses in the ability of the federal government to exercise policy leadership with respect to labour market policy were believed to be strongly offset by the perceived advantages in terms of national unity. Such is not the case with environmental policy. Although control over the environment has been a traditional demand of Quebec, successive governments have not pressed the issue particularly hard. Unlike labour market training and development, jurisdiction over the environment was not part of the Meech Lake Accord, and did not figure prominently in the negotiations leading to the Charlottetown Accord.

Second, the federal government has not exercised the same leadership with respect to environmental policy harmonization as it did with respect to labour market matters. Sheila Copps, who as minister of the environment for much of the period leading up to the eventual rejection of the EMFA in the spring of 1996, was among those ministers who felt that the federal government should retain a leadership role in key areas. Thus, if the EMFA was eventually rejected, part of the reason lies in the fact that the federal side "got cold feet" and could not bring itself to sign a comprehensive agreement that would have significantly reduced the environmental policy role of the federal government either by transferring responsibility to the provinces or by creating mechanisms to develop and implement national policy.

Finally, in marked contrast to labour market training, in the development of environmental policy, strong, vocal interest groups are opposed to a change to the status quo.⁴¹ Environmental groups are adamant that the federal government should retain a leadership role with respect to environmental policy. For their part, organizations representing business and industry, while generally supportive of anything that will reduce overlap and duplication, have not pressed hard for harmonization. In some cases this is because the industry association is split with some members close to a particular provincial government. In other cases, the lack of pressure from industry is the result of a focus, not on harmonization, but on deregulation or voluntary compliance with existing regulations.

OPPORTUNITY LOST: THE ENVIRONMENTAL MANAGEMENT FRAMEWORK AGREEMENT

The Environmental Management Framework Agreement is an impressive but flawed document that would have recast the roles and responsibilities of the federal and provincial governments with respect to environmental policy. The harmonization initiative itself was extraordinary in its scope and complexity. Federal and provincial officials were told that, short of a formal constitutional amendment, everything was on the table.⁴² More significant perhaps, the EMFA would have formally introduced a distinction between federal, provincial, and "national" policies, the latter being jointly developed by Ottawa and the provinces acting in concert. It is this latter innovation that deserves particular attention, even though ministers ultimately rejected the EMFA.

The EMFA runs for more than one hundred pages and includes a short Framework Agreement and 11 schedules dealing with everything from the mundane (e.g., environmental education and communications) to the very important (e.g., the development of new guidelines and standards and the enforcement of existing regulations). In the Framework Agreement Ottawa and the provinces commit themselves to promoting predictability, clarity, and efficiency in environmental management (Preamble) and explicitly recognize that they share responsibility for ensuring that environmental matters are effectively managed (article 4.1). Although much of the agreement is concerned with defining the interests and responsibilities of the federal government (article 4.2) and the provincial governments (article 4.3), the EMFA does set out a process to develop "national" policies (article 5.2 and schedule VI).

In the Framework Agreement, a very strict distinction is made between federal, provincial, and "national" responsibilities. The latter term is explicitly defined and is said to mean that:

the common interest is shared by federal, provincial and territorial governments, or that, even if one order of government had the lead role, shared decision-making is required or desired by that order of government. (article 1.1).

What is striking is that, in this agreement, the federal government was willing to distinguish between that which is "federal" and that which is "national." In a very explicit fashion Ottawa recognized that the policies and programs that it enacted, while applicable across the country, were not synonymous with national policies, the latter being the responsibility of both orders of government acting in concert. Moreover, in being party to the EMFA, the federal government would have acknowledged that for truly national policies to be initiated, some form of shared decisionmaking would be required.

WEAKNESSES OF THE EMFA

The EMFA, had it been signed, would have broken new ground in the conduct of intergovernmental relations in Canada. Nevertheless, the agreement as drafted had a number of weaknesses, which led, in part, to its rejection. First, the EMFA did not include a clear decision rule. Second, the agreement would, potentially, have been a *de facto* amendment to the constitution. Third, the EMFA would have created a series of powerful policymaking bodies only indirectly accountable to Canadian voters. I would like to briefly consider each of these weaknesses in turn.

NO DECISION RULE LEADING TO GRIDLOCK

Section 5.2 of the Framework Agreement very briefly sets out a process for developing national policies and allows for a national policy development process as set out in a separate schedule. Schedule VI, Policy and Legislation, describes a process for national environmental policy development where a primary clear goal is to minimize if not eliminate overlap and duplication in federal and provincial legislation (article 1). Unfortunately the Framework Agreement and Schedule VI are largely silent on the decision rule that will be employed in the development of national policies. The EMFA would have created a series of committees responsible for policy development, policy coordination, and implementation; but no where is there an explicit statement of the decision rule that would be employed. In the absence of a formal decision rule, it is almost certain that a unanimity rule would be used. This would have given Ottawa and each of the provinces a veto over the development and implementation of national policies. The net result would have likely been a very slow decisionmaking process. As CIELAP has argued, the EMFA would likely have increased the capacity for bureaucratic wrangling over environmental measures and starkly limited the chances that anything will be done to protect the Canadian environment.⁴³

A *DE FACTO* CONSTITUTIONAL AMENDMENT?

As noted earlier, the EMFA would have allowed for national policies jointly decided by the two orders of government. Although this is arguably a useful innovation in the conduct of intergovernmental relations, for some critics of the EMFA this reference to national policies represents a *de facto* constitutional amendment.⁴⁴ Elsewhere critics argue that, by creating national decisionmaking processes, the EMFA would have created a new level of government, one that would be illegitimate, unaccountable, and unworkable.⁴⁵

The fact that the EMFA would have had such a profound impact on the division of powers is very important given the current preoccupation with so-called non-constitutional changes to the federation. The working assumption is that a formal amendment to the constitution is all but impossible so that any significant changes to the roles and responsibilities of Ottawa and the provinces must be done by a series of administrative agreements and simple statutory changes. However, a formal amendment to the constitution is difficult if not impossible for at least two sets of reasons, only one of which is addressed by administrative agreements and statutory changes. First, it is simply very difficult to amend the constitution. Not only is the formal amending procedure quite rigid, the decision to hold a national referendum on the Charlottetown Accord means that a similar vote will be required for any significant amendments to the constitution. Moreover, in several provinces, ratification of a major constitutional change can only come after a province-wide referendum. Intergovernmental agreements such as the EMFA do get around this problem to some extent. Yet it is important to keep in mind that constitutional amendment is also difficult because of a lack of societal consensus on the desirability of such amendments. This applies particularly to formal changes to the division of powers, which would shift power from the federal government to the provinces. While such a shift is deemed desirable by many there is by no means consensus on this issue. Others are strongly opposed to anything that would further weaken the federal government. And in the particular case of environmental policy, there is even less consensus. While some deem a stronger provincial role to be desirable, others, notably the national ENGOs, are strongly opposed to anything that would further weaken the position of the federal government.

In sum, even though the EMFA would have meant a shift in the environmental policy regime and the creation of a process leading to national environmental policies, the fact that the agreement would have meant a *de facto* change to the division of powers is deemed by many to be a fundamental weakness.

ADDING TO THE DEMOCRATIC DEFICITS OF INTERGOVERNMENTAL RELATIONS

A third major criticism of the EMFA, one that would apply equally to the Canada-Wide Accord, is that these agreements add to the democratic deficits of Canadian governments. As CIELAP has argued, the EMFA would have created a shadow-level of government, unknown to most of the Canadian public, and unaccountable to any constituent save the other parties to the agreement.⁴⁶ Although the terms used by CIELAP may be a bit exaggerated, increased use of intergovernmental agreements does pose real challenges for democratic accountability. Simply put, intergovernmental policymaking, because it is one or more steps removed from the "regular" political process

within a single jurisdiction, is less open, less transparent, and inherently less democratic. In other words, intergovernmental policymaking exacerbates the democratic deficit of contemporary governance.⁴⁷ Thus both the EMFA and the Canada-Wide Accord add to this democratic deficit because they are inherently intergovernmental in character and propose to give the CCME additional policymaking responsibilities.

CONCLUSIONS

Since the early 1990s, intergovernmentalism has become one of the defining characteristics of Canadian environmental policy. The highlights of this emphasis on intergovernmental cooperation are arguably both the rejected Environmental Management Framework Agreement and the pending Canada-Wide Accord on Environmental Harmonization. Ironically enough, the cooperative spirit has not resulted in concrete progress. The federal and provincial ministers of the environment eventually rejected the elaborate and flawed EMFA and the accord is really only another best-efforts document.

This chapter has sought to explain the meagre returns of this renewed interest in cooperative federalism. The argument is that the federal and provincial governments have not been able to craft a new allocation of responsibilities as a result of a range of societal, institutional, and spillover factors. In summary, environment ministers have not been able to make a significant change to the status quo because of reduced public interest in environmental policy, strong opposition from ENGOs and only lukewarm support from business and industry groups. Moreover, progress has been difficult because decisions of the CCME must be unanimous, decisive leadership by the federal government has not been forthcoming, and because of the inherent complexity of any effort to move a single window approach to environmental management. Although the environmental policy harmonization efforts have benefited from the broader interest in non-constitutional changes to the division of powers, this has only meant pressure from the top to get a deal with little reference to the actual content of a harmonization of environmental policy in Canada.

Notwithstanding the meagre results, the intense intergovernmentalism of the past several years did produce the Environmental Management Framework Agreement, an innovative but flawed document that would have, had it been agreed to, created a new and distinct pattern of intergovernmental decisionmaking and governance. The importance of the EMFA lies in the fact that the agreement identified the possibility of national policies and national decisionmaking where national was not synonymous with federal.

The ultimate rejection of the EMFA has several implications for the conduct of Canadian intergovernmental relations over the next few years. The weaknesses of the agreement are clear. However, in rejecting it in favour of

the subsequent Canada-Wide Accord, Ottawa and the provinces sent a strong signal about the likely pattern of intergovernmental relations in other areas. For example, the failure of the EMFA is likely to be telling for initiatives in other areas, notably social policy. Given the reluctance of the federal government to cede real authority over environment policy, Ottawa is unlikely to concede a provincial role in other areas; for example, in interpreting the *Canada Health Act*. Similarly, the very complexity of the EMFA may be partly an explanation of its downfall. However, the complexity of the agreement was the result of the magnitude of the changes being proposed to the roles and responsibilities of the two orders of government. This suggests that radical, wholesale change in the roles and responsibilities of the two orders of government is less likely than a continuing process of incremental change. Finally, the ENGO critique of the EMFA, notably the concerns raised about the increased reliance on intergovernmental decisionmaking, are likely to be repeated and amplified if and when the two orders of government seek to expand their reliance on intergovernmentalism. As Roger Gibbins has pointed out, intergovernmental forums are largely beyond the reach of electoral accountability. Gibbins asks, how, for example, could federal MPs be held accountable for programs and policies that were policed through intergovernmental forums? And for the same reasons, how could provincial governments be held responsible or accountable?⁴⁸

Ultimately, the lesson of the EMFA and of the recent past of environmental federal-provincial diplomacy may be that ways must be found to reconcile two competing goods. On the one hand, intergovernmental decisionmaking creates the possibility for decentralization of power from Ottawa in a way that still allows for a national policy instead of a series of potentially conflicting provincial (or aboriginal) policies. On the other hand, intergovernmentalism must produce more than hopelessly complex agreements that do not specify a clear decision rule and make governments less, rather than more accountable to the electorate.

NOTES

Numerous colleagues offered comments on previous drafts of this chapter. I particularly want to thank Kathryn Harrison, Harvey Lazar and Katherine Sharf Fafard and the two anonymous reviewers who provided a variety of useful criticisms, comments and even kudos. Of course, the usual caveats apply.

1. See the chapters by Keith Banting, John Richards and Harvey Lazar in this volume for analysis of varying aspects of this renewed emphasis on intergovernmentalism.
2. See the chapter by Harvey Lazar in this volume and Herman Bakvis, "Federalism, New Public Management, and Labour-Market Development," in *Canada: The State of the Federation 1996*, ed. Patrick C. Fafard and Douglas M. Brown

(Kingston: Institute of Intergovernmental Relations, Queen's University, 1996), pp. 135-65. None of this is meant to suggest that a non-constitutional approach is sufficient to resolve the challenges facing the country.

3. For an introduction to the constitutional basis of provincial and federal activity with respect to the environment see, David Vanderzwaag and Linda Duncan, "Canada and Environmental Protection: Confident Political Faces, Uncertain Legal Hands," in *Canadian Environmental Policy: Ecosystems, Politics and Process*, ed. R. Boardman (Toronto: Oxford University Press, 1992); and A.R. Lucas, "Natural Resource and Environmental Management: A Jurisdictional Primer," in *Environmental Protection and the Canadian Constitution*, ed. D. Tingley (Edmonton: Environmental Law Centre, 1987), pp. 31-43.
4. With only some exaggeration, Vanderzwaag and Duncan argue that the approach of the federal government has been one of deference, and the federal power to act has in practice been dealt away by federal-provincial agreement. Vanderzwaag and Duncan, "Canada and Environmental Protection," p. 23.
5. For a summary of the shifting patterns of intergovernmental relations with respect to the environment, 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), pp. 179-99; and Kathryn Harrison, *Passing the Buck, Federalism and Canadian Environmental Policy* (Vancouver: University of British Columbia Press, 1996).
6. See Harrison, "Prospects for Intergovernmental Harmonization in Environmental Policy."
7. For a discussion of the different possible patterns of intergovernmental relations with respect to environment policy, see Patrick Fafard and Kathryn Harrison, "Intergovernmental Relations and Environmental Policy: Concepts and Context," a paper presented to a conference, "The Environment and Intergovernmental Relations," Queen's University, 13-15 February 1997.
8. The following account of recent intergovernmental relations with respect to the environment draws primarily on Gerry Fitzsimmons, "Harmonization Initiative of the Canadian Council of Ministers of the Environment," a paper presented to the 1995 IPAC National Forum, mimeo, August 1995; Canadian Institute for Environmental Law and Policy, "Harmonizing to Protect the Environment? An Analysis of the CCME Environmental Harmonization Process," mimeo, November 1996; and Canadian Council of Ministers of the Environment, *Background on the Harmonization Initiative*. The latter can be found on the CCME web site at <http://www.ccme.ca/ccme/background.html>.
9. Alas, the participation of Quebec was not to last. In November 1994 the Quebec government announced it was withdrawing from the LRC, citing the federal government's proclamation of the *Canadian Environmental Assessment Act*.
10. For example, in a commentary on the EMFA, the Canadian Institute for Environmental Law and Policy argued that the EMFA was prepared in the absence of appropriate mechanisms for meaningful consultation with non-governmental organizations and other stakeholders. See CIELAP, "The Environmental

- Management Framework Agreement — A Model For Dysfunctional Federalism? An Analysis And Commentary," CIELAP Brief Number 96/1, February 1996. This document can be found at the CIELAP Web site: <http://www.web.apc.org/cielap>.
11. "Environmental Harmony or Environmental Discord? An Analysis of the Draft Environmental Management Framework Agreement and a Statement of Principles for the Protection of Canadas Environment," mimeo, April 1995. This document was signed by 65 national, provincial, and local ENGOS.
 12. Rosemary Spiers, "Environmental safety sacrificed for harmony," *The Toronto Star*, 2 July 1996.
 13. Canadian Institute for Environmental Law and Policy, "Harmonizing to Protect the Environment? An Analysis of the CCME Environmental Harmonization Process," mimeo, November 1996.
 14. On the hortatory nature of intergovernmental agreements and, in particular, the standards sub-agreement to the Canada-Wide Accord, see Alastair R. Lucas, "Underlying Constraints on Intergovernmental Cooperation in Setting and Enforcing Environmental Standards," paper presented to a conference, "The Environment and Intergovernmental Relations," Queen's University, 13-15 February 1997.
 15. "Harmonization Accord Draft Text: A Canada-Wide Accord on Environmental Harmonization," mimeo, 1997. The draft text of the accord can be found on the CCME Web Site at: http://www.mbnet.mb.ca/cme/accord_draft.html.
 16. This section also builds on a similar analysis found in Harrison, "Prospects for Intergovernmental Harmonization in Environmental Policy." However, a somewhat wider range of explanatory factors are considered here.
 17. As one of the reviewers of this chapter observed, maintaining ecosystem integrity over the long term is a highly complex matter that challenges the capacity of the existing institutions of intergovernmental relations and public administration generally. To put it differently, intergovernmental relations are based on a federal system of government, which privileges a territorial definition of the Canadian polity. A more expansive, ecological point of view places much less emphasis on territory and takes a broader frame of reference. Such a broader frame of reference *is* needed to explain the challenges of making environmental policy and actually improving the quality of the environment. However, it is not likely to be needed to explain the recent patterns of intergovernmental relations, which are the focus of this chapter.
 18. Angus Reid Group Inc., *The Federal Political Scene, The Public Agenda, The National Angus Reid Southam News Poll*, Public Release Date: Thursday, 30 January 1997. This National Angus Reid/Southam News Poll was conducted by telephone between 21-27 January 1997 among a representative cross-section of 1,519 Canadian adults. With a national sample of 1,519, one can say with 95 percent certainty that the results are within +2.5 percentage points of what they would have been had the entire adult Canadian population been polled. In a similar poll in July 1989, 31 percent of respondents identified the environment as the most important issue. The poll results can be found at: <http://www.angusreid.com/pressrel/fedpolscenejan97.html>.

19. See Harrison's discussion of public opinion, "Prospects for Intergovernmental Harmonization in Environmental Policy," pp. 189-91.
20. Much of the following is taken from Patrick Fafard, "Groups, Governments and the Environment: Some Evidence from the Harmonization Initiative," paper presented to a conference, "The Environment and Intergovernmental Relations," Queen's University, 13-15 February 1997.
21. See, for example, "The Draft Environmental Management Framework Agreement and Schedules: A Commentary and Analysis." CIELAP Brief 95/1; and "The Environmental Management Framework Agreement — A Model for Dys-functional Federalism?"
22. See, for example, Rosemary Spiers, "Environmental safety sacrificed for harmony." However, *The Toronto Star* is somewhat unique in this regard and the harmonization process has not captured the attention of the national media.
23. Personal communication with Mark Winfield, Director of Research, Canadian Institute for Environment Law and Policy, March 1996.
24. What follows is drawn in part on Fafard, "Groups, Governments and the Environment."
25. See Heather A. Smith, "The Provinces and International Environmental Policy Making: The Case of Climate Change," a paper presented to a conference, "The Environment and Intergovernmental Relations," Queen's University, 13-15 February 1997.
26. J. Stefan Dupré, "Reflections on the Workability of Executive Federalism," in *Intergovernmental Relations*, ed. Richard Simeon, Vol. 63, Research Studies, Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985), pp. 1-32. A revised version of this paper also appears as "The Workability of Executive Federalism in Canada," in *Federalism and the Role of the State*, ed. Herman Bakvis and William M. Chandler (Toronto: University of Toronto Press, 1987), pp. 236-58.
27. For example, the CCME runs pollution prevention awards program, has drafted water quality guidelines, and has developed a National Packaging Protocol.
28. See Kathryn Harrison, "The Regulator's Dilemma: Regulation of Pulp Mill Effluents in the Canadian Federal State," *Canadian Journal of Political Science* 29 (1996): 469-96.
29. See David Cameron, "Does Ottawa Know it's Part of the Problem?" in *Québec-Canada: What is the Path Ahead?* ed. John E. Trent et al. (Ottawa: University of Ottawa Press, 1996), pp. 293-98.
30. For an introduction to the new public management see *inter alia*, Andrew Gray and Bill Jenkins, "From Public Administration to Public Management: Reassessing a Revolution?" *Public Administration* 73 (Spring 1995): 79-99; and Donald Savoie, "Public Administration: A Profession Looking for a Home," in *Policy Studies in Canada: The State of the Art*, ed. Laurent Dobuzinskis, Michael Howlett and David Laycock (Toronto and Buffalo: University of Toronto Press, 1996), pp. 125-46.

31. For an introduction to ASD, see Robin Ford and David Zussman (eds.), *Alternative Service Delivery: Sharing Governance in Canada* (Toronto: KPMG Centre for Government Foundation, 1997).
32. See Michael D. Mehta (ed.), *Regulatory Efficiency and the Role of Risk Assessment* (Kingston: School of Policy Studies, Queen's University, 1996).
33. For an overview of the evolution of environmental regulation in Canada see Kathryn Harrison, "Retreat from Regulation: Evolution of the Canadian Environmental Regulatory Regime," in *Canadian Regulatory Institutions: Globalization, Choices and Change*, ed. G. Bruce Doern et al. (Toronto: University of Toronto Press, forthcoming.).
34. In Winnipeg, the federal and provincial ministries of the environment and the Secretariat of the CCME have relocated to a single location and are working toward a single administrative structure and shared resources. Personal communication from Liseanne Forand, CCME Secretariat.
35. For a critical discussion of the weaknesses of the "new public management" see Donald Savoie, "Public Administration: A Profession Looking for a Home."
36. See Canada, Office of the Prime Minister, *Speech from the Throne, Ottawa, Ontario February 27, 1996*. A copy of the speech can be found at the web site of the prime minister: <http://pm.gc.ca>.
37. Canadian Institute for Environmental Law and Policy, "Harmonizing to Protect the Environment? An Analysis of the CCME Environmental Harmonization Process," p. 6.
38. Human Resources Development Canada, "Canada and Québec Sign Historic Labour Market Agreement," News Release 97-28, 21 April 1997. A copy of the release can be found at: http://www.hrdc-drhc.gc.ca/hrdc/ei/lma/qc/9728_e.html
39. See the chapter by Harvey Lazar in this volume. See also Bakvis, "Federalism, New Public Management, and Labour Market Development."
40. See Cameron, "Does Ottawa Know it's Part of the Problem?"
41. The following is taken from Fafard, "Groups, Government and the Environment."
42. I am indebted to Kathryn Harrison for bringing this to my attention.
43. "The Environmental Management Framework Agreement — A Model for Dysfunctional Federalism? An Analysis And Commentary," CIELAP Brief Number 96/1, February 1996, p. 9.
44. See "Environmental Harmony or Environmental Discord? An Analysis of the Draft Environmental Management Framework Agreement and a Statement of Principles for the Protection of Canadas Environment," mimeo, April 1995, p. 1.
45. "The Environmental Management Framework Agreement — A Model for Dysfunctional Federalism?" p. vii.
46. Ibid., p. 16.
47. The term democratic deficit or democracy deficit is usually used as part of a critique of decisionmaking in the European Union. For an introduction to the issues in an EU context see Michael Newman, "Democracy and the European

Union," in *The Future of Europe*, ed. Valerie Symes et al. (London: Macmillan, 1997), pp. 15-42. For a discussion of the inherent democratic deficit of Canadian intergovernmental relations, see Roger Gibbins with the assistance of Katherine Harmsworth, *Time Out: Assessing Incremental Strategies for Enhancing the Canadian Political Union*. Commentary 88 (Toronto: C.D. Howe Institute, 1997).

48. Roger Gibbins, *Time Out: Assessing Incremental Strategies for Enhancing the Canadian Political Union*, p. 19.

Federalism and Aboriginal Relations

Audrey Doerr

Cet article examine le contexte des relations intergouvernementales en ce qui concerne les gouvernements autochtones. Il souligne quelques initiatives intergouvernementales clefs impliquant les gouvernements autochtone, fédéral et provincial dans les domaines des réclamations territoriales des autochtones, des développements économiques et de l'éducation. Les exemples de coopération tripartite n'ont pas l'intention d'être exhaustifs mais plutôt des exemples des quelques activités nonconstitutionnelles courantes en cours qui appuient le progrès de l'autonomie gouvernementale autochtone. Ils démontrent aussi l'usage et l'adaptation des mécanismes intergouvernementaux dans ces domaines de politiques gouvernementales.

INTRODUCTION

The inclusion of aboriginal self-government as an inherent right and as a third order of government in Canada in the 1992 Charlottetown Accord was a demonstration of the effectiveness of aboriginal leadership working within the machinery of executive federalism.¹ With the defeat of the referendum on the accord, combined with general constitutional fatigue on the part of the electorate, the discussion of these and other constitutional issues fell by the wayside. Perhaps because of this, the constitutional proposals of the federal Royal Commission on Aboriginal Peoples (RCAP), established in August 1991, have not provided the basis for an ongoing political debate of aboriginal constitutional issues. The response of the federal government to the report when it was released in November 1996 was cautious.² In the absence of any strong federal response, few provincial governments made comments.³

These reactions may also be explained in part by the numerous undertakings being pursued on a non-constitutional, intergovernmental basis. Upon its election in 1993, the federal Liberal government committed itself to a policy that recognized that the inherent right to self-government already existed within

section 35 of the *Constitution Act, 1982*. A number of program initiatives — especially in the areas of land claims, economic development, and education — were also proposed. And, like its predecessor, the Liberal government distanced itself from the issues and alliances of the previous administration.⁴

During the federal Liberal government's first term, the then minister of Indian affairs and northern development, the Honourable Ron Irwin, undertook an ambitious campaign to pursue the "practical agenda" of the *Red Book* by making agreements with willing aboriginal groups, and, wherever possible, provincial governments, on a broad range of initiatives.⁵ Diversity in approaches was encouraged and new alliances between Ottawa and regional aboriginal leaders were forged. It also became evident that Prime Minister Chrétien favoured an incremental rather than a wholistic approach to aboriginal issues and wished to avoid any national process that would add pressures on his government.⁶ As a measure of ministerial political effectiveness, it could be argued that First Nation and aboriginal issues were effectively managed or that the federal Liberal government read accurately public opinion on these issues, or both, given that aboriginal issues hardly surfaced during the federal election campaign of 1997.

By pursuing non-constitutional processes on a regional basis, a diverse range of issues has emerged from an always crowded, aboriginal agenda. While the traditional provincial view has been that the federal government has legislative authority for Indians and lands reserved for Indians under section 91(24) of the *Constitution Act, 1867*, provincial governments have become increasingly involved in aboriginal issues. In particular, the entrenchment of aboriginal and treaty rights in sections 25 and 35 of the *Constitution Act, 1982* has broadened that responsibility to include provincial governments on an increasing number of legal and practical issues. For example, the constitutional recognition of aboriginal and treaty rights has led to a more active role for provinces, especially on matters of implementation of those rights as well as matters involving provincial interests in land claims and self-government negotiations. Furthermore, provinces have to deal with municipal concerns about federal or provincial negotiations with neighbouring aboriginal communities. And provincial governments continue to spend on programs targeted to Aboriginal Peoples including First Nations individuals on reserve.

The following discussion is intended to provide the reader with an introduction to current directions of intergovernmental activities and initiatives involving First Nations. The scope of the chapter, nevertheless, is limited to a few key subject areas with examples that typify constructive intergovernmental cooperation that enhances First Nation control over their affairs through non-constitutional means. It does not provide an exhaustive survey province by province or territory by territory, but rather selects a number of initiatives across the country to demonstrate the nature of intergovernmental collaboration with First Nations. The process of institution-building involving

partnerships with the private sector is also noted to demonstrate how these activities, in turn, can strengthen the position of First Nations in their dealings with other governments.

As the First Nation population continues to increase at a rate that is estimated at twice Canada's national average, First Nation leaders are faced with growing pressures from community members for social and economic improvements to support the well-being of their communities.⁷ The leaders must often work with non-aboriginal governments to bring about improvements in social and economic circumstances. For their part, non-aboriginal governments are often pressured by third-party interests to resolve outstanding issues respecting aboriginal rights or to find the means of supporting aboriginal efforts to advance their economic interests. But the fact that tripartite participation may be driven by pragmatic motivations on the part of each of the parties does not detract from these undertakings.

INTERGOVERNMENTAL RELATIONS

In the past, many First Nation communities existed largely in isolation from mainstream society. As a result, the interest, let alone the opportunity, for contact with provincial governments and municipalities was limited and the relationships with the federal government were characterized, at best, as paternalistic. In the years after the Second World War, the situation began to change and gradually the federal government took steps to encourage greater Indian participation in their own affairs. The right of status Indians to vote in federal elections, for example, was legislated in 1960. But the federal government's White Paper of 1969, which proposed wide-ranging recommendations to give First Nations "equal status" in society, was rejected by the leadership.⁸ This led to the development of a more united and more aggressive approach by First Nation leaders in demanding recognition of their aboriginal rights and more control and responsibility for their affairs. As a result, there was also an increasing level of direct contact between aboriginal leaders and provincial governments and municipalities even though many First Nation communities, especially the Treaty First Nations in western Canada, emphasized the bilateral relationship with the federal Crown, i.e., the federal government.

Just as the Canadian federal system has been made to work through the accommodation of jurisdictional interests by employing a wide range of administrative mechanisms, the introduction of aboriginal governments into the intergovernmental milieu follows similar patterns. At the ministerial level, the participation of aboriginal representatives at First Ministers' Conferences on Aboriginal Constitutional Affairs and in subsequent constitutional fora in the 1980s and 1990s, gave aboriginal groups the opportunity to gain experience

with the formal political processes of executive federalism. At the administrative level, there are federal-provincial-aboriginal agreements, joint boards and councils, and a range of cost-sharing agreements respecting government programs. In brief, every means of cooperative undertaking is available to non-aboriginal and aboriginal governments to enhance the participation of First Nation leadership in intergovernmental affairs. The use of these techniques reflect the practical necessity of collaborative effort in particular circumstances. The examples below, for the most part, reflect tripartite processes although in other areas First Nation communities may prefer to relate on a bilateral basis with federal and provincial governments respectively. Let us consider some of the undertakings:

LAND CLAIMS

Access to land and resources for Aboriginal Peoples is important to them to correct injustices from the past and to provide an economic base in the present and future.⁹ Land-claims negotiations have attempted to resolve long-standing issues in many parts of the country. In the Northwest Territories, the long-held dream of an Inuit "home land" is finding reality in the establishment of Nunavut in the eastern Arctic, which will be a public government with the status of a territory. In northern Quebec, First Nation and Inuit leaders have been able to use the compensation and resources obtained through their land-claims settlements to advance the well-being of their communities. In many areas in southern Canada, however, terms and conditions in First Nation land agreements and treaties of the past restrict the claims that governments are prepared to accept and negotiate. There are two federal claims policies, comprehensive claims and specific claims, which are used and adapted to meet differing circumstances and legal obligations.¹⁰ Most provincial governments have tended to develop and apply a single policy or policy framework for land-claims negotiations or have dealt with issues on a case-by-case basis. Some examples of current intergovernmental claims processes are the following.

In *British Columbia*, with the exception of a small part of Vancouver Island and an area in northeastern British Columbia, no land treaties were ever signed with First Nations. Following the Report of the British Columbia Claims Task Force in 1991, an agreement was reached in 1992 between the governments of Canada and British Columbia and the First Nations of British Columbia to establish the British Columbia Treaty Commission (BCTC). Subsequently, both federal and provincial governments passed legislation to establish the commission and the First Nations' Summit of British Columbia chiefs formally endorsed its establishment.

The commission acts as a coordinating body for the start-up of negotiations and as a monitoring body which also has authority to allocate funds to

First Nations for their participation in these processes. The process itself involves six stages which range from submitting a statement of intent to the negotiation of final agreements and implementation of the treaty. To make negotiations comprehensive, self-government has been included in the subject matters for negotiation. Regional Advisory Committees have been established in each treaty negotiation area and provide a means for third-party interests to become informed on the negotiations and to advise the negotiators for the federal and provincial governments and the First Nation involved. Public information sessions are also a common feature of individual negotiations. Currently, there are 46 First Nation groups representing over 70 percent of British Columbia First Nations involved in the BCTC process.¹¹

One of the first groups to reach an agreement-in-principle (A-I-P) with Canada and British Columbia was the Nisga'a First Nation in 1996. This A-I-P provides the framework and basis for substantive negotiations on a range of specific subject matters. With negotiations for a final agreement underway, the British Columbia government established a Select Standing Committee on Aboriginal Affairs to conduct hearings into the treaty process and subjects arising from the Nisga'a agreement-in-principle in the fall of 1996. These public hearings which took place throughout the province were concluded in March 1997. As well, provincial ministries have conducted studies to assess the socio-economic effects of the agreements.¹² Generally, these agreements are perceived as being beneficial to all parties.¹³

The conduct of tripartite negotiation processes in British Columbia may be viewed as a real breakthrough in intergovernmental cooperation. After years of denying the existence of any aboriginal rights and any need for provincial involvement in earlier federal negotiations with First Nations, the province is a full partner at the negotiating table. It also participates, with the federal government, in a cost-sharing agreement to support the negotiations. While the BC treaty process holds promise for future resolution of aboriginal claims in that province, it will be a process that can be expected to take time even with continued public support. Some First Nation groups may be interested in moving quickly whereas others can be expected to be cautious or have differences which may be difficult to resolve. But the process has a statutory basis and it can be expected to provide an ongoing, formal mechanism for addressing these claims.

In the *Prairie provinces*, where First Nations are parties to treaties that involve land, many specific claims have been negotiated through a process called Treaty Land Entitlement. These types of claims arise when a First Nation has not received all of the land it is owed under treaty provisions to which it is a party and submits a claim to the federal government for negotiation.¹⁴ Negotiations on these issues with First Nations in Alberta, Saskatchewan, and Manitoba go back many years but only recently have a significant number of agreements been reached among federal and provincial governments and

claimant First Nations in those provinces. Provincial participation is needed, for the negotiations usually involve the transfer or purchase of provincial Crown land. Furthermore, the implementation process requires coordination and cooperation between federal and provincial and municipal governments.¹⁵ In 1996, an agreement-in-principle among negotiators for Canada, Manitoba, and 19 First Nations on treaty land entitlement issues for those communities was announced. These negotiations are reported to be the last set of contested claims of this nature.¹⁶

The Saskatchewan government has also agreed recently to play a formal role in broader treaty-based discussions including self-government issues. An Office of Treaty Commissioner in Saskatchewan, first established in 1987 by the federal government, was given a new mandate in 1996 to facilitate self-government negotiations and to assist with exploratory discussions on treaty issues. The agreement was supported by both the governments of Canada and Saskatchewan.¹⁷ The active involvement of the province in the renewal of the Office marks another advance for intergovernmental approaches to these issues. A third example of tripartite approaches to land-claims issues is the Indian Commission of Ontario. Established in 1978 by federal and provincial Orders-in-Council, this tripartite body, among other roles, facilitates tripartite negotiations of many of the specific land claims in the province. Many of the claims in southern Ontario involve pre-Confederation treaties and land settlements devised by colonial governments in Upper Canada, which subsequently became the province of Ontario. In addition, the negotiation of post-confederation treaties in northern Ontario and the accompanying legal cases, created special provincial interests in traditional or treaty area lands especially concerning the natural resources on those lands.¹⁸ The interest and willingness of successive provincial governments in Ontario to address First Nation land issues has ebbed and flowed over recent years. The problem that Ontario governments often face in moving expeditiously is opposition from third-party interests such as the Ontario Anglers' and Fishermen's Association and other groups of this nature. While the Indian Commission of Ontario continues to provide a formal forum for tripartite discussion, First Nations in Ontario are frequently frustrated with what they perceive as a lack of political will, especially on the part of the province, to settle claims. It appears that the current provincial government, with its particular ideological outlook, has not given any strong indication of its interest in addressing major issues. Rather, its emphasis has been on specific, practical problems involving the parties.

Aboriginal land claims can be expected to remain an ongoing issue for all parties. For First Nations, land-claims settlements hold out the possibility of developing a stronger economic base. For non-aboriginal governments, settlements are intended to provide certainty over the status of the land and certainty against future claims and, in turn, address third-party interests. The fact that

the main elements of major agreements receive constitutional protection under section 35 of the *Constitution Act, 1982* also enhances their importance in intergovernmental relations in Canada.

In the final analysis, claims-settlement processes must be viewed from a long-term perspective. It is important to remember that for the First Nations, treaty-making processes are the basis of an ongoing relationship, especially with the federal government. Agreements reached at particular points in time are milestones but not necessarily conclusions of the process. For non-aboriginal governments, finality is often the main objective and government representatives are frequently perplexed when issues are raised after agreements are reached. To the extent that land-claims agreements have been reached or that claims are under negotiation in those regions of Canada where treaties had not been reached previously, it could be argued that this is an indication of good progress on these issues. For many of the First Nation groups, the compensation and benefits afforded by the claims settlements have helped to narrow the economic gap and allow First Nation leaders to keep pace with socio-economic pressures from their communities associated with population growth. And the experience gained through the intergovernmental negotiation processes has also helped build and maintain ongoing working relationships, processes, and even structures of intergovernmental cooperation.

ECONOMIC DEVELOPMENT

Economic self-sufficiency is considered a basic prerequisite of self-government.¹⁹ Yet, First Nations have often been limited in pursuing opportunities for economic development by the complex, legal restrictions of the *Indian Act*.²⁰ In addition, the lack of management experience and lack of equity funding have been particularly difficult issues for First Nation entrepreneurs. But increasingly, there are indications that some of these obstacles are being removed. As First Nations develop their own economic institutions, their ability to interact with other governments is enhanced. Furthermore, federal and provincial governments have facilitated First Nation initiatives to expand business opportunities with other players with their current emphasis on partnerships with the private sectors and other organizations.

An example of an emerging First Nations' economic institution in the resource sector is Indian Oil and Gas Canada (IOGC). Created in 1987 as an agency within the federal Department of Indian Affairs and Northern Development, steps are now being taken to transfer control to First Nations. In June 1996, the federal government signed an agreement with the Indian Resource Council, the First Nation organization representing First Nations with oil and gas interests, to establish a Board of Directors to co-manage the oil and gas resources located on Indian reserve lands.²¹ During the co-

management phases, the authority and decisions of the board require the approval of the executive director of IOGC and operations will continue in accordance with the existing *Indian Oil and Gas Regulations, 1995* and *Indian Oil and Gas Act*. For the Indian Resource Council to assume full control, regulatory and legislative changes to the existing laws will be undertaken.

The natural gas and oil sector is an important component of provincial economies, especially in Alberta. The operations of this First Nation company, with headquarters located in Calgary, position it to become a leading aboriginal resource agency in that region as well as across Canada. Currently, it manages assets valued at more than \$1.1 billion.²²

Historically, First Nation enterprises have had limited access to financial capital through non-aboriginal lending institutions. In recent years, many Canadian chartered banks have begun to recognize the potential of cultivating aboriginal clientele, as evidenced by more and more examples of chartered banks opening branches in First Nation communities. But until the past year, the only First Nation financial institution in Canada was the Peace Hills Trust company in Alberta.

The creation of a *First Nation Chartered Bank* grew out of a commitment in the 1993 Liberal *Red Book* to establish a national aboriginal financial institution. On 6 December 1996, the federal government announced that the Federation of Saskatchewan Indian Nations (FSIN) and its financial arm, the Saskatchewan Indian Equity Foundation, and the Toronto Dominion Bank would jointly invest in a chartered First Nation Bank of Canada (FNBC). To that end, the Indian Equity Foundation committed \$2 million and the TD Bank committed \$8 million investment in the First Nation Chartered Bank. The Department of Indian and Northern Affairs provided \$511,000 in initial developmental costs.²³ The first branch of the FNBC opened in early 1997 in Saskatoon, Saskatchewan. It offers a full range of banking services, administration and financial support services. Its western Canadian location is a reflection of the proactive leadership role taken by the Federation of Saskatchewan Indian Nations to help advance economic development and to provide services to First Nation clientele.

Another example of an aboriginal financial agency is the *Indian Taxation Advisory Board* (ITAB). Created in 1989 by the Department of Indian Affairs and Northern Development to provide the minister with advice on the approval of property taxation by-laws, it has promoted real property taxation by First Nations and assists in the development of policies and procedures. With the assistance of ITAB, more than 50 First Nations have enacted by-laws taxing real property interests on reserve lands. First Nation revenues raised by these taxes are estimated to exceed \$12 million.²⁴

The work of ITAB has also led to an interesting example of intergovernmental cooperation. In June 1996, a Centre for Excellence in Municipal-

Aboriginal Relations was announced by representatives of the federal government, the Federation of Canadian Municipalities [FCM], and the Indian Taxation Advisory Board.²⁵ Funded by the federal government and the FCM-member municipalities, this centre is designed to offer opportunities for municipalities to share with aboriginal governments their best practices in financial management, service delivery, and political accountability. It acts as a national body which provides a forum for exchange of information and research on issues such as municipal-aboriginal intergovernmental relations, taxation governance, and service delivery. Given the concerns that have been expressed by municipal governments about the role of local aboriginal governments in economic development in recent years through the Federation of Canadian Municipalities, this kind of initiative provides excellent opportunities for improved relations, especially in relation to concerns about local taxation.

While economic and financial institution-building helps strengthen the economic base for First Nations and position them for more effective interaction with other governments and organizations, there are also examples of intergovernmental cooperation on economic development initiatives. In addition, economic development is one area where federal and provincial governments have worked closely in recent years to reduce overlap and duplication in programming and to improve service to the client through program coordination. An example of how First Nations can participate in intergovernmental collaboration, in private sector partnership and in streamlining government processes is the New Brunswick Federal-Provincial-Aboriginal Joint Economic Development initiative (JEDI). Since 1994, federal, provincial and aboriginal representatives have worked together to identify and pursue undertakings that will contribute to aboriginal economic development in New Brunswick and have put in place a number of joint program initiatives. For example, there is a three-year Strategic Aboriginal Employment Placement plan involving governments and the private sector in partnership. The Union of New Brunswick Indians was funded to conduct job opportunity analyses in the region. Joint public sector-private sector funding has supported training initiatives for employment for Aboriginal People in chartered banks, as teachers' aids in provincial schools and as business entrepreneurs. With support from the New Brunswick Regional Development Corporation, Atlantic Canada Opportunities Agency and the Royal Bank, a Native Youth Entrepreneurship Loan program for on-reserve aboriginal youths is being administered by the Ulnooweg Development Group Inc., an Aboriginal Capital Corporation. There are currently some 50 business projects, the development of which is being facilitated by the Atlantic Canada Opportunities Agency and the New Brunswick Department of Economic Development.²⁶

Many other examples of success stories of First Nation entrepreneurship and enterprise can be found. Annual Aboriginal and First Nation business award events are held nationally and, in some cases provincially, to acknowledge the achievement of aboriginal business leaders. These efforts to enhance the economic status of First Nations helps, directly and indirectly, to strengthen the role their governments play in relations with non-aboriginal governments and with the private sector.

EDUCATION

Education provides an interesting example of evolving federal-provincial-First Nations relations. Contrary to some perceptions, the administration of Indian education has always involved federal and provincial governments. In the *Indian Act*, the federal government has legislated on schools and matters related to their operation and the attendance of students.²⁷ The provincial governments have responsibility for such matters as curriculum, standards, and certification of teachers. With respect to postsecondary education, the federal government has provided funding to eligible Indian and Inuit people through its Post-Secondary Student Support Program introduced in 1985 but formally accepts no jurisdictional responsibility in this area.²⁸

If a First Nation government wants to assume jurisdiction and control over education for its members, it will need to negotiate with both federal and provincial governments. And with the introduction of the federal government's Inherent Right policy introduced in 1995, it is now possible for a First Nation to negotiate First Nation jurisdiction over education including curriculum with willing provincial governments as well as control over administration and operations of schools with the federal government.²⁹

The Mi'kmaqs of Nova Scotia are an example of this. On 14 February 1997, Mi'kmaq Chiefs of Nova Scotia, the federal minister of Indian and northern affairs and the provincial premier of Nova Scotia signed an agreement that transferred jurisdiction for education to the First Nations. The agreement allows for the transfer of approximately \$140 million to the First Nations for education over a five-year period.³⁰ Programs covered under this agreement include primary and secondary education on-reserve and postsecondary education funding to band members on and off-reserve. The funding will also provide for the operation and maintenance of facilities, band administration, and capital. Legislation will be passed to formalize the agreement.

The agreement goes beyond devolution of administrative responsibility to the First Nations. It provides for full transfer of responsibility and control over education by the community. In this way, it simplifies the provisions of educational services which in the past have involved the two levels of

government by recognizing the jurisdiction of the First Nation government for education.

CONCLUSIONS

Any attempt to assess the success of these initiatives may be tempered by the perspective of the individual reader. Success or failure in land-claims negotiations or with economic development or educational initiatives may also be judged differently by different players in the processes themselves. On balance, however, it could be argued that the undertakings that are there, especially in the area of land claims and economic development and increasingly in the area of education, indicate significant progress in intergovernmental relationships between First Nations and other governments. In turn, these relationships have helped enhance the capacity of First Nations to address social and economic issues in their communities as well as strengthen their position in dealings with other governments.

In a recent article which provided a macro-assessment of federal government activities in past decades, Arthur Kroeger, a former deputy minister of Indian affairs and northern development noted the federal government's past inability to solve aboriginal socio-economic problems with expensive social programs.³¹ The direct participation of First Nation governments as an equal party in intergovernmental processes may help to provide different approaches and, hopefully, solutions to long-standing socio-economic problems. The examples provided here also demonstrate that with the various governmental and business institutions which are emerging there will be a need for ongoing intergovernmental collaboration. In sum, the place of aboriginal governments in Canadian federalism is starting to have a clearer, practical definition as institutions are established and formal processes produce legally-binding agreements. And, non-aboriginal governments generally seem to be supportive of intergovernmental undertakings of a practical nature.

Although constitutional issues have not been high on the agendas of non-aboriginal governments, the recommendations of the Report of the Royal Commission on Aboriginal Peoples have brought back to the table the outstanding constitutional issues, including aboriginal sovereignty, the creation of a third order of aboriginal governments, and an aboriginal Parliament. Whether the federal and provincial governments will be interested or willing to pursue discussions on these subjects may, like many instances in the past, be influenced by the force and confluence of political events at a particular point in time. What can be expected is that both federal and provincial governments will use the results of the non-constitutional processes as evidence that progress can be made without constitutional reform.

In the meantime, provincial governments remain cautious about their participation even in non-constitutional undertakings and often comment with concern, perceived or real, that the federal government may be trying to off-load responsibility for First Nations to them. Notwithstanding the constitutional discussions of recent decades, provincial governments, for the most part, continue to view responsibility for First Nations as a federal responsibility, especially as it relates to funding programs and services. Often the federal government has had to bring pressure to bear to obtain provincial participation in discussions involving First Nations. But where there is a common practical interest and political will, progress can be made on negotiating and supporting agreements that have a mutual benefit to all parties.

In the immediate future, the role that First Nation leaders, especially those in Quebec, will play on national unity issues will be important to watch. While the issue of Quebec sovereignty was used by First Nation leaders to argue for the recognition of aboriginal rights in the 1970s, paradoxically, today, questions are being raised by some First Nation and Inuit leaders in Quebec about whether Quebec has a legal right to declare independence unilaterally. Prior to the 1995 Quebec referendum, both Inuit and First Nation communities in the province conducted their own referenda which resulted in an overwhelming response by aboriginal voters to remain a part of Canada.³² If a constitutional process is renewed, First Nation leaders will want to be strategically positioned. Practical achievements that support stronger First Nation economic base and institutions of self-government will also enhance the influence that First Nation leaders may have in any intergovernmental discussions about the future of Canadian federalism.

We are in an era in which aboriginal governments, whatever their particular institutional structure and authority, are going to be increasingly active participants on the intergovernmental landscape along with all the other types and forms of governments and governing authorities in Canada. We are going to have to continue to find creative solutions to accommodate First Nation communities within our federal system. This may result in radical surgery to our constitutional framework to accommodate the diversity. But pragmatism has always been a vital element of good government in Canada and the means of finding solutions to our challenges of governance.

NOTES

1. See the *Draft Legal Text, 9 October 1992*. As the text states: "[This] text is based on the Charlottetown Accord of 28 August 1992. It is a best efforts text prepared by officials representing all the First Ministers and Aboriginal and Territorial Leaders." See pp. 1, 3, 37, and 38 in particular.
2. The report was released on 21 November 1996. See Canada, Royal Commission on Aboriginal Peoples (RCAP), *Report* (Ottawa: Canada Communications Group,

1996). The five volumes included: Volume 1: *Looking Forward, Looking Back*; Volume 2: *Restructuring the Relationship*; Volume 3: *Gathering Strength*; Volume 4: *Perspectives and Reality*; and, Volume 5: *Renewal: A Twenty Year Commitment*. The federal response was threefold. First, the minister indicated that it was not possible to increase program expenditures as recommended; but, second, the report would be reviewed. See Scott Feschuk, "Cost of reforms \$30-billion, report on aboriginals says," *The Globe and Mail*, 22 November 1996, p. A9. Third, the department issued a report outlining government achievements from 1993. See Department of Indian Affairs and Northern Development, "Aboriginal Agenda: Three Years of Progress" (Ottawa: Public Works and Government, 15 November 1996), mimeo.

3. Alberta Social Services Minister Stockwell Day questioned the report's recommendations that the province should share the cost for any increases in program spending. See Larry Johnsrude, "Minister fears Ottawa's aims," *Calgary Herald*, 22 November 1996, p. A3.
4. The relationship between successive ministers of Indian affairs and northern development and the national chief of the Assembly of First Nations (AFN) is shaped by politics and personality. At the end of the Liberal regime in 1984, there was a close alliance between the two respective incumbents. With the change of government in September 1984, the Progressive Conservative minister, David Crombie, chose to travel out to the communities rather than focus on the national leadership. But the AFN leadership also changed and a new rapport was established. By 1993, however, the then AFN national chief, Ovide Mercredi, had been working closely with the Progressive Conservative government on a number of issues not the least of which had been the Charlottetown Accord. With the election of the Liberal government in 1993, the relationship between the national chief and Minister Irwin was problematic from the beginning. The national chief's interest in constitutional issues and Minister Irwin's general disinterest in these issues was only one of many differences between them which emerged over the following three years, and were never reconciled.
5. See "Aboriginal Agenda." Sixty-seven initiatives are listed in this report.
6. For example, see Edward Greenspon, "PM's past suggests caution," *The Globe and Mail*, 22 November 1996, pp. A1 and A7.
7. See Royal Commission on Aboriginal Peoples, *Looking Forward, Looking Back*, p. 15.
8. See Audrey Doerr, "Indian Policy," in *Issues in Canadian Public Policy*, ed. G.B. Doern and V. S. Wilson, (Toronto: Macmillan, 1974), pp. 36-54.
9. See RCAP, *Restructuring the Relationship*, Part 2.
10. The federal comprehensive claims policy addresses the negotiation of claims with aboriginal groups where rights of traditional use and occupancy of the land had been neither extinguished by treaty nor superseded by law. Specific claims policy deals with claims relating to outstanding lawful obligations of the federal government whether under the terms of treaties, obligations of the *Indian Act*, or the proper discharge of responsibility for reserve lands.

11. See Department of Indian Affairs and Northern Development, "Yale First Nation, Canada, and British Columbia Sign Framework Agreement," 12 February 1997, news release, mimeo.
12. See Federal Treaty Negotiation Office, *Treaty News*, March 1997 on Indian and Northern Affairs WorldWideWeb Site.
13. For an academic assessment of the process see Christopher McKee, *Treaty Talks in British Columbia: Negotiating a Mutually Beneficial Future* (Vancouver: University of British Columbia Press, 1996).
14. See Department of Indian Affairs and Northern Development, "Treaty Land Entitlement in Manitoba," Ottawa, *Backgrounder*, 21 June 1996, mimeo. Land allotments under most of the numbered treaties signed by the First Nations of the Prairies and the Canadian government were based on population. However, population counts used by early surveyors as a means of determining land quantum for reserves were often only rough estimates of the land entitlement and these calculations did not always provide for the full entitlement of land under the treaty.
15. For a discussion of the types of issues, see an article by Theresa M. Dust, Q.C., entitled "The impact of aboriginal land claims and self-government on Canadian municipalities," *Canadian Public Administration*, forthcoming 1997. The paper is based on a study done for the Intergovernmental Committee on Urban and Regional Research, Toronto, Ontario in 1995.
16. It should be noted that these particular negotiations in Manitoba had been stalled since 1984 largely as a result of differences between federal and provincial governments. See Department of Indian Affairs and Northern Development, "Treaty Land Entitlement in Manitoba."
17. Department of Indian Affairs and Northern Development, "Historic Agreements Signed by Canada, Saskatchewan and Federation of Saskatchewan Indian Nations," news release, 31 October 1996, mimeo.
18. See Bradford W. Morse (ed.), *Aboriginal Peoples and the Law: Indian, Métis and Inuit Rights in Canada* (Ottawa: Carleton University Press, 1985), for discussion of *St. Catherine's Milling Co. v. the Queen*, 1888, pp. 96-99; and for discussion of federal-provincial agreements respecting Indian Reserve Lands, pp. 487-500.
19. See Special Committee on Indian Self-Government, *Report* (Ottawa: Minister of Supply and Services, 1983); and RCAP, *Restructuring the Relationship*, ch. 5.
20. See Shin Imai and Donna Hawley, *The 1995 Annotated Indian Act* (Toronto: Carswell, 1994). For example, legal title to First Nation land is "vested in Her Majesty." The use or disposition of that land is therefore subject to a variety of restrictions and regulations. The legal status of a Band Council is also limited under the Act. There are, for example, numerous cases in law dealing with the extent of the legal status of a band, whether it can be sued or sue, whether it can acquire or hold real property and the extent of its liability. See *ibid.*, pp. 6-9.
21. Department of Indian Affairs and Northern Development, "Government/First Nations Management Board," Ottawa, *Backgrounder*, June 1996, mimeo.

22. Information obtained from the Office of the Executive Director, Indian Oil and Gas Canada, 6 August 1997.
23. Ibid., "Federal Government Congratulates Federation of Saskatchewan Indian Nations and the TD Bank on Launch of First Nations Bank of Canada," news release, Ottawa, 9 December 1996, mimeo.
24. The Indian Taxation Advisory Board reports that some 57 First Nations in British Columbia and Alberta have enacted taxing-by-laws. Source: Indian Taxation Advisory Board Web Site on INAC WorldWideWeb site.
25. Department of Indian Affairs and Northern Development, "Centre for Excellence in Municipal-Aboriginal Relations Announced," news release, Calgary, 3 June 1996, mimeo.
26. "New Brunswick Federal-Provincial-Aboriginal Joint Economic Development Initiative (JEDI)," *Backgrounder*, Ottawa, March 1997, mimeo.
27. *Indian Act*, pp. 115-19.
28. Federal funding is approximately \$247 million nationally and provided support to more than 27,000 aboriginal students in 1996-97. In recent years there has been some 3,500 graduates a year. See Department of Indian Affairs and Northern Development, "Increase in Post-Secondary Education Enrollment," Ottawa, 1997, mimeo.
29. See Canada, Department of Indian Affairs and Northern Development, *Federal Policy Guide: Aboriginal Self-Government: Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (Ottawa: Minister of Supply and Services, 1995).
30. Department of Indian Affairs and Northern Development, "Education Jurisdiction Transferred to Mi'kmaq of Nova Scotia," news release, Ottawa, 14 February 1997, mimeo.
31. See Arthur Kroeger, "Governing in the Millennium: How *Much* less Government" (Ottawa: Research Group of Canadian Centre for Management Development, 1996), as reported in Canadian Centre for Management Development, *Executive Leadership* 9, 3, p. 7.
32. There is also a growing policy interest in these issues. Among other publications, the Institute for Research on Public Policy has a Quebec-Canada series on *Aboriginal Peoples and the Future of Quebec*. One of the RCAP studies was also focused on some of these issues. See Renée Depuis and Ken McNeil, *Canada's Fiduciary Obligation to Aboriginal Peoples in the Context of Accession to Sovereignty by Quebec*, Vol. 2. *Domestic Issues* (Ottawa: Minister of Supply and Services, 1995).



III

Intergovernmental Diplomacy

Alberta's Intergovernmental Relations Experience

Roger Gibbins

Cet article trace l'histoire du département des affaires fédérales et intergouvernementales de l'Alberta (FIGA) de 1972 à aujourd'hui, et le fait dans le but d'explorer l'évolution plus générale des relations intergouvernementales dans la province. Cette évolution peut être expliquée comme une réponse stratégique à la position politique et démographique de l'Alberta à l'intérieur de l'état fédéral canadien. Plus spécifiquement, le gouvernement provincial a utilisé les relations intergouvernementales comme l'endroit préféré dans lequel faire avancer une vision constitutionnelle clairement définie. On fait aussi l'argument que le comportement intergouvernemental de l'Alberta parallèle étroitement celui du gouvernement canadien en essayant de gérer ses liens avec les États-Unis. À cet égard, les relations intergouvernementales dans l'Alberta peuvent être perçues comme une politique étrangère canadienne en plus petit. Cet article conclut en suggérant que plusieurs des défis intergouvernementaux dont l'Alberta fait face, seront dans un avenir rapproché affrontés par les gouvernements provinciaux à travers le pays, et que, par conséquent, l'expérience de l'Alberta a une applicabilité canadienne élargie.

INTRODUCTION

Other chapters in this volume have addressed the ongoing and potential reform of the Canadian federation through non-constitutional means. In practice, this means reform *of* and *through* intergovernmental relations. Within this context, the Alberta experience looms large. Historically, the province has carried disproportionate weight within intergovernmental councils, and has played an active role in shaping the norms and practices of intergovernmentalism. In the contemporary era, Alberta has taken a leadership role in reforming the intergovernmental aspects of social policy, and has been at the forefront of provincial involvement in trade policy and promotion. Alberta was quite likely the central player in the intergovernmental negotiations leading up to the Agreement on Internal Trade. In short, if we are to understand

the intergovernmental aspects of non-constitutional reform, Alberta's experience is a good place to start.

As is so often the case, to understand the present we must begin with the past. Two coincidental events in 1972 have come to play an important role in shaping our conceptual understanding of Canadian intergovernmental relations and the institutional realities of those relations. The "conceptual" event was the publication of Richard Simeon's *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*, which grafted the analytical framework and political imagery of international relations onto the study of Canadian federalism. The "institutional" event was the establishment of Alberta's Department of Federal and Intergovernmental Affairs (FIGA), a new central agency designed to coordinate the province's growing engagement in intergovernmental relations and to yoke that engagement to Alberta's larger strategic objectives. This chapter brings these two events together by showing that Alberta's experience with *intergovernmental* relations bears a striking resemblance to Canada's experience with *international* relations.

The primary tasks of this chapter are to provide (a) an explanation of the contemporary intergovernmental relations scene in Alberta, (b) a brief discussion of intergovernmental challenges on the horizon, and (c) some concluding commentary on the extent to which one can generalize from Alberta to the larger intergovernmental experience. These can best be accomplished by starting with an historical overview of two sides of the same coin: intergovernmental relations in the province, and FIGA as their institutional expression. This overview is particularly relevant to our understanding of contemporary intergovernmentalism because there is a consistent story line to the province's experience, one embedded in the evolution of FIGA. For all governments in Canada, intergovernmental relations constitute an ongoing, complex and increasingly important activity. But for Alberta, the practice of intergovernmental relations is much more. It is a philosophy of government and a strategic response to the province's perceived (and demonstrated) weakness within parliamentary institutions. As a consequence, there is a coherence to the Alberta experience which may not be typical.

It should be noted, of course, that FIGA does not manage the totality of Alberta's intergovernmental relations. A good deal of the intergovernmental load, indeed the bulk of that load, is carried by the line departments which have developed their own intergovernmental experience, capacity and expertise. Many of the larger intergovernmental conflicts over such issues as gun control, health-care extra-billing, potential carbon taxes, and the Canadian Wheat Board have taken place through line departments with limited involvement from FIGA. Nonetheless, it is FIGA that pulls this larger picture into focus, and it is through an examination of FIGA that the broad story of Alberta's intergovernmental experience can be most easily detected.

THE INTERNATIONAL MODEL

If there has been a clear theme to Canadian foreign policy since the end of the Second World War, it can be found in the attempt to embed bilateral relations with the United States into an institutionalized, multilateral environment.¹ Canadian governments have realized that formal bilateral relationships with the United States are best avoided because of the ten-to-one disparity in population and economic power. Canada will always be out-gunned (figuratively) in a bilateral relationship. There is also no room for creative alliance-building in a bilateral relationship, except in circumstances where domestic American allies can be found. (Canadian governments, for example, were able to harness American environmentalists to their acid rain agenda, whereas domestic allies have been difficult to find in the Pacific salmon dispute.) As a consequence, Canada has been an enthusiastic supporter of multilateralism — the United Nations, NATO, the Organization of American States, and NAFTA instead of the FTA. Lying behind this enthusiasm has been a consistent effort to ensure that bilateral Canadian-American relations are conducted *by the rules* and *through the institutions* of multilateralism. The Canadian mouse has neither the domestic clout within the US nor the population and economic resources that would be necessary to have faith in bilateral relations with the American elephant.²

Now, just as Canada's population is only one-tenth that of the United States, Alberta contains just under one-tenth (9.3 percent) of Canada's population. And just as Canada lacks effective political clout within American congressional institutions, so too has Alberta traditionally lacked effective clout within Canadian parliamentary institutions. Now care must be taken not to exaggerate the parallel, for even in the worst of times Alberta's influence within parliamentary institutions has surpassed Canada's influence within congressional institutions. Nevertheless, the *perceived* exclusion from national decisionmaking captures a foundational element in Alberta's political culture and the regional culture of the west. It is the genesis and rallying cry of western alienation: "The West Wants In!" Furthermore, just as Canada has tried to avoid formalized bilateral relations with the United States and has pursued instead a policy of multilateralism, so too has Alberta pursued an analogous strategy of intergovernmentalism. In short, Alberta has approached its place within the Canadian federal state as Canada has approached its place within North America. Intergovernmentalism in Alberta's case is Canadian foreign policy writ small.

Admittedly, this model of the Alberta experience cannot simply be asserted, and the first part of the chapter is designed to provide substantiation. However, in assessing the evidence the reader should keep in mind the role social science models play. They are not meant to incorporate the full complexity of political reality, but rather are designed to throw into relief general patterns of

experience, highlighting central features while leaving many of the nuances in shadow. The present model provides only a broad conceptual understanding of the Alberta intergovernmental experience, and suggests how that experience sheds light on the larger Canadian case. It abstracts from the Alberta experience, and thereby imposes a measure of coherence that may not have been apparent to or even planned by the governments of the day.

HISTORICAL EVOLUTION OF INTERGOVERNMENTALISM IN ALBERTA

The recent history of intergovernmentalism in Alberta spans the three Progressive Conservative administrations of Peter Lougheed (1971-1985), Don Getty (1985-1992), and Ralph Klein (1993 onward). We will look at these in turn, paying particular attention to the patterns of continuity that sweep across the three administrations.

THE LOUGHEED YEARS

Our story begins in 1971 with the election of Peter Lougheed's Progressive Conservatives, ending 36 consecutive years of Social Credit government. A partisan change in government is unusual in Alberta; indeed, it had happened only twice before 1971 — in 1921 and 1935 — and has not happened since. As a consequence, changes in government are inevitably seen as milestone events, and the 1971 election was no exception. It signaled the beginning of a determined effort by the government and people of Alberta to leave their mark on the national scene, to put aside the province's economic and political marginalization. And, within Lougheed's first term, external events in the international oil market were to provide Alberta with the financial wherewithal to be taken seriously within the national community. In short, Lougheed's election marked the dawn of the "new West" as the province shook off the lingering dust of the Great Depression and the ideological inertia of Social Credit.

But there was a problem. Shortly after the Progressive Conservatives came to power provincially, the 1972 federal election left Alberta without representation on the government side of the House of Commons. If Alberta was to establish an effective political presence on the national scene, it would have to be done through the premier and intergovernmental relations rather than through elected representatives in the House. Thus the establishment of FIGA had been opportune.³ It should be stressed, moreover, that the 1972 election was seen not as an aberration but as a dramatic confirmation of a regional critique of parliamentary institutions that reached back at least to the Progressives and the United Farmers of Alberta in the early 1920s.

Parliamentary institutions, it was believed, would inevitably reflect the demographic weight and hence economic interests of the central Canadian provinces. Here readers will recognize the now-classic distinction between intrastate and interstate federalism. Albertans believed that intrastate federalism — the expression of regional interests within the parliamentary institutions of the national government — was so badly flawed that only an interstate strategy — relying on government-to-government relations — offered any realistic prospect of success.

A practical reason for strengthening the province's intergovernmental capacity should also be noted. The 1973 Western Economic Opportunities Conference, held in Calgary and attended by representatives from the federal, western provincial and territorial governments, demonstrated that the western provinces could be brought together in a united front if there was the political will, leadership and institutional capacity to do so.⁴ At the same time, it also demonstrated that Ottawa would overwhelm provincial delegations in federal-provincial forums unless those delegations were well-prepared, thoroughly briefed, and aggressively led. Playing effectively on the intergovernmental stage, therefore, required bureaucratic resources of the sort rapidly put into place through FIGA. At the time of FIGA's founding, however, it was not assumed that such resources would be necessary over the long haul. FIGA's first annual report struck a touching note of optimism: "It must be remembered ... that many issues of intergovernmental affairs are of a perennial nature and will not disappear by waving a wand, but will instead require *several months or even years* of study and negotiation" (emphasis added).⁵

Although FIGA was by no means unique, it provided an example of a top-flight intergovernmental "shop." FIGA, like most central agencies, was never a big player in terms of budget or staff; its influence within the provincial government depended on the political authority it was able to command. Thus it is important to note that FIGA's first minister was Don Getty, widely seen at the time of his appointment as a central and influential figure in the Lougheed Cabinet, as was Lou Hyndman, FIGA's second minister. Their appointments signaled the importance the premier was perceived to place in FIGA. It should also be stressed that Lougheed's extensive involvement in intergovernmental relations meant that FIGA served the premier along with its minister.⁶

Alberta's dilemma with intrastate federalism, and its exclusion from the federal Cabinet, only deepened in the years following FIGA's creation. In the federal election of 1974, Albertans again did not elect an MP on the government side of the House, and the provincial government's concern about Ottawa's propensity for unilateral action increased. As FIGA's minister, Lou Hyndman, stated in the Alberta Legislature:

I think it's clear that as a government we must be wary of new federal initiatives in a host of areas in which they are moving ... Certainly, as a province we're

prepared to co-operate in any way we can on a reasonable basis. We're prepared to negotiate. We're prepared to go to meetings and have discussions. But as a province we're not prepared to accept unilateral decisions from Ottawa.... That's not the kind of confederation we see. That's not the kind of Canada we, and I think other provinces, envision.⁷

Then, after the 1979 election of Joe Clark's minority Progressive Conservative government, Alberta was not only on-side but the prime minister himself was from the province, although not necessarily in line with the provincial government's thinking of energy pricing. If the Clark government had lasted, Alberta's intergovernmental strategy would have been tested; it is more difficult to argue that intrastate federalism does not work when the prime minister is from your province, although Quebec governments have shown that it is not impossible to do so. But Clark did not last, and the strategy was not put to the test. Instead, the election of the Trudeau Liberals in 1980, again without a Liberal MP from Alberta (or for that matter from anywhere west of Winnipeg), soon led to the most graphic failure yet of Canadian federalism, at least from the perspective of Albertans. The 1980 National Energy Program was seen as an unprecedented attack by the federal government on Alberta's wealth and, more fundamentally, on the constitutional division of powers. The federal government, it appeared, was ignoring the constitutional rules of the game. When Ottawa also announced in the fall of 1980 its plan to unilaterally repatriate and amend the constitution, Albertans' views on federalism bordered on paranoia.

The problem was how to rein in a federal government that was bent, hell-bent it seemed, on unilateralism. The answer was to be found in alliance-building with other provincial governments, a strategy that was possible within the context of intergovernmentalism. FIGA facilitated an aggressive alliance-building strategy whose objective was to use intergovernmentalism just as Canada used multilateralism on the international stage, to create interprovincial alliances that would offset or at least temper the political power of the federal government. In this respect, Alberta worked not only with the other three western provinces but also with Quebec. Although in the popular political culture Quebec and Alberta were generally seen to be at odds, there was a good measure of commonality at the governmental level. Both governments resisted unilateral action by the federal government, and both sought to rollback federal intrusions into provincial fields of responsibility. It was only when Alberta's insistence on the constitutional equality of the provinces ran up against Quebec's quest for recognition as a distinct society, and when institutional reforms such as Senate reform were on the table, that the two diverged.

It was in the intergovernmental negotiations of 1981-82 that Alberta scored perhaps its biggest constitutional success by orchestrating a new amending formula in which all provinces were treated equally. The formulas built into

the 1982 *Constitution Act* had the great virtue, from Alberta's perspective, of not singling out any province for special treatment. The 7/50 requirement denied any one province a veto, and where a veto was provided in other sections, it was provided to all. Thus the Act recognized the constitutional equality of the provinces, and built in additional protection for provincial jurisdiction with respect to natural resources. It staved off the unilateral inclinations of the federal government of the day, and prevented unilateral constitutional amendment in the future.⁸ Therefore the Act, including the intergovernmental process leading up to it, reflected Alberta's strategy of locking the federal government into an intergovernmental web; Ottawa could neither act unilaterally nor appeal directly to the people over the heads of the provincial governments.

The Lougheed years saw FIGA's international expansion as Alberta began establishing offices in London, New York, Los Angeles, Houston, Tokyo, Hong Kong, and Seoul.⁹ (Alberta, nevertheless, was a relatively small provincial player on the international stage; Quebec had 29 offices abroad, Ontario 19 and British Columbia 9 at their respective peaks.¹⁰) In some respects, an international presence made sense for a province so heavily dependent on international trade. FIGA's offices abroad were mandated to promote the sale of Alberta products, encourage investment in and business immigration to Alberta, provide strategic trade advice to the Alberta government, market Alberta as a tourist destination, promote technology transfer, and arrange for scientific, cultural, and academic exchanges.¹¹ Although all this was appropriate for a province with an export-based economy, it can also be argued it would not have been necessary in a well-functioning federal system in which the national government and its external representatives were alert to regional interests and priorities. However, this presupposes an effective intrastate regime in which regional representatives can monitor the national government's external performance. Instead, Alberta pursued an intergovernmental strategy and mandated its international offices to "keep Canadian diplomats informed of Alberta's interests, priorities, and expertise, so that they, too, can work on Alberta's behalf."¹²

In his last intergovernmental appearance at the 1985 First Ministers' Conference on the economy, Peter Lougheed threw his considerable weight behind the initiation of free trade negotiations with the United States. This initiative was quickly picked up by the Mulroney government, and when the negotiations began Alberta entered an important new stage in the evolution of intergovernmental relations, and did so with a new premier at the tiller.

THE GETTY YEARS

Given that there has been no change in Alberta's governing party since the 1971 election, it is important to ask whether there was significant policy or strategic change associated with the leadership transition from Peter Lougheed to Don Getty. The basic answer is that change had an effect, but not to the extent of seriously disrupting the intergovernmental strategy put in place by Lougheed. Although Lougheed was the primary architect of this strategy for securing provincial influence on the national scene, Don Getty was to solidify it throughout the negotiations leading to the Free Trade Agreement (FTA) and the North American Free Trade Agreement (NAFTA). His primary strategic departure was to champion Senate reform (discussed below) or, in more conceptual terms, the reform and reinvigoration of intrastate federalism. Alberta's first and to this point only Senatorial "selection" was held during Getty's term of office. However, he did not abandon intergovernmental relations in his pursuit of Senate reform; instead, he opened up a second and eventually unsuccessful front in Alberta's ongoing pursuit of effective political influence and thereby economic protection on the national stage.

Canada entered free trade negotiations with the United States in large part because of the growing fear of unilateral action by the American Congress; a free trade agreement was seen as the best device to tie the hands of Congress. Alberta, for its part, expressed a similar concern about unilateral action by the federal government. The fear was that Ottawa would use trade agreements to strengthen its control over the internal economy. Alberta was determined that freer trade not provide a mechanism for greater federal encroachments on provincial fields of jurisdiction. The province was prepared to surrender control to the marketplace, but not to Ottawa.

During the negotiations surrounding the proposed FTA, and then surrounding NAFTA, the Alberta government realized that it had an important stake in the *process* as well as the outcome. On the outcome side, the position of the Alberta government was straight-forward; it wanted as broad and deep a free trade agreement as possible. On the process side, it wanted to ensure that any agreement would not provide a mechanism through which future federal governments might intrude on provincial areas of jurisdiction. Thus Alberta was more concerned about protecting itself from Ottawa than it was about protecting the province's economic interests from the United States; the latter was seen as a non-issue.

This set of process concerns spilled over into the negotiations on internal free trade that were spawned by the continental free trade agreements and growing economic impact of globalization. Here again, Alberta was concerned that if the provincial governments could not act in concert to promote internal free trade, their failure to do so might provide an excuse for unilateral action by the federal government. Once more, multilateral action by provincial

governments was promoted as an alternative to unilateralism by the federal government, potentially reinforced by constitutional amendments to strengthen Ottawa's powers of economic management. The provinces, it was hoped, could play a creative role rather than simply reacting to the federal government.¹³ While Alberta was concerned about the substance of the eventual Agreement on Internal Trade, its primary concerns were with the process, with the institutional mechanisms that might evolve to handle conflict resolution, and with denying the federal government the opportunity or rationale for further economic intervention.

The Getty years are difficult to summarize with respect to intergovernmental relations. In terms of the FTA and NAFTA, Alberta was successful in achieving both its primary economic goal (broader free trade) and its intergovernmental objectives; Ottawa brought the provinces into the free trade negotiations, and the agreements did not strengthen Ottawa's economic powers vis-à-vis the provincial governments. With respect to internal free trade, Alberta and the other provinces denied Ottawa the opportunity to step in as the only political actor capable of cutting through a slew of provincial trade barriers. While the Agreement on Internal Trade was neither as deep nor as broad as Alberta would have preferred, it was nonetheless an intergovernmental success in that Ottawa was unable to assume leadership for the reduction of internal trade barriers. The failures of the Getty years came on the national unity front; the alliance with Quebec that helped create the Meech Lake Accord was unable to ensure its passage, and hopes for Senate reform were dashed when the Canadian and Alberta electorates defeated the 1992 referendum on the Charlottetown Accord. However, these failures were not Getty's alone; he was far more instrumental in the construction of constitutional packages than he was in their ultimate rejection.

THE KLEIN YEARS

What happened when Ralph Klein replaced Don Getty as premier of the province? Klein immediately abandoned Getty's pursuit of constitutional reform, and thus of Senate reform. He returned to a purely intergovernmental strategy, and in this he had lots of company. Klein, after all, was elected leader of the Alberta Progressive Conservatives less than two months after the referendum defeat of the Charlottetown Accord. In the wake of that defeat the country as a whole turned its back on constitutional reform, and the populist Alberta premier was no exception. His focus was on *rebalancing* achieved through non-constitutional change. In effect, Klein argues that the constitutional status quo should be respected, not changed. In this regard he is in line with the arguments made by Peter Lougheed that the province's ownership of natural resources and its programmatic jurisdiction were not being respected by a federal government that ignored the rules of the game in its pursuit of

unilateralism. Although the NEP dragon was slain by the Mulroney government, other dragons were to be found in Ottawa's unshackled spending power and unilateral cuts to transfer programs. Here the 1995 federal budget and its unilateral changes to interprovincial transfers — the CHST initiative — was a watershed event in the eyes of the Alberta government.

If one looks back prior to the 1971 election, there is little evidence that Alberta sought a fundamental redistribution of powers between the federal and provincial governments. Conflicts, when they arose, related to a perception that Alberta was not being treated equally with other provinces (e.g., the *Natural Resources Transfer Act*) or that the province's constitutional authority was not being respected (e.g., Premier Ernest Manning's opposition to national medicare). When Peter Lougheed came to power, there was little significant change in these respects; the new premier's primary concern was with the *protection* rather than *expansion* of provincial powers. Alberta premiers reflected a conclusion drawn across the west that the primary need was for greater regional influence on the exercise of federal government powers rather than for the transfer of powers to the provincial governments. It is worth noting in this context that the constitutional position paper released by the Alberta Legislature in March 1992 did not call for any change to the division of powers, but only for a clarification of federal and provincial roles and responsibilities.¹⁴

The west's position in this regard is quite different from Quebec's. At least until recently, the west has sought power at the centre rather than devolution, whereas Quebec has used its formidable power at the centre to pursue devolution. Quebec has married its intergovernmental relations strategy to its political strength within parliamentary institutions and the federal Cabinet, whereas Alberta's intergovernmental relations strategy has been used to compensate for its chronic weakness at the centre. Quebec's is an insider strategy, Alberta's an outsider strategy. And, Quebec's strategy has been used as a bridge to independence, whereas Alberta's strategy has been used to ward off a federal government within which Quebec leaders have been the principal players.

But what about Klein's emphasis on rebalancing? Should this be seen as a major departure, as a quest for more provincial power? Here the point to stress is that rebalancing as envisioned by Klein need not entail constitutional change. Indeed, rebalancing is appealing because it can be achieved without constitutional change; it is about making existing governments work, and work better. All that is required is for the federal government to respect the existing division of powers and butt out of provincial responsibilities, such as the management of the health-care system. The case for rebalancing is basically a case for the constitutional status quo. The argument is not that the provinces should do more, but that Ottawa should do less. And what it does do, it should do in *intergovernmental concert* with the provinces. This was the position adopted by nine of the ten premiers at the 1996 Premiers' Conference in Jasper.

Premier Klein has been instrumental in getting rebalancing on the country's intergovernmental agenda, establishing the terminology (Ottawa preferred "improving the efficiency of the federation" to "rebalancing") and articulating a rationale built on public accountability (badly blurred in the past by the spending power) and the elimination of waste springing from duplication. He has been effective in harnessing the federal government's retreat from constitutional reform and its near-desperate search for non-constitutional national unity solutions to his own intergovernmental agenda. Alberta's concern with overlap and duplication with respect to labour market training has been longstanding, and when the attempt to address this issue through the Charlottetown Accord collapsed, Alberta came back to it through the rebalancing initiative. More generally, the communiqué of the 1994 Annual Premiers' Conference set out to establish provincial leadership in the non-constitutional reform of social programs falling within provincial jurisdiction, and Alberta set out to be a leader among the provinces. The premiers collectively were concerned with much more than financial transfers and penalties. The Canadian identity, it has frequently been argued, is bound up in the nature of social programs, and thus the premiers were determined to show that the Canadian identity could be as well protected through intergovernmental agreements as it could through federal government encroachments in provincial areas of jurisdiction. Simply put, they were unwilling to concede the high ground of national unity to the federal government. Note, for example, a September 1996 speech by Premier Klein.

I mentioned a moment ago that Canada is internationally acclaimed for its social programs, and on this point [the premiers] agree with the federal government — that our social programs truly do define us as Canadians. In an "Issues Paper on Social Policy".....the Premiers have proposed a specific eight-point plan for the reform and renewal of social policy in Canada. Some in the federal government simply respond with the tired old line about "Provinces wanting to dismantle health care, social services, etc., etc." That response is unbecoming of the national government.¹⁵

In these respects, Klein is expressing well-established Alberta themes. For example, the 1992 Select Special Committee on Constitutional Reform stated that "Canada's network of social security and social service programs are an integral component of the Canadian identity, and maintenance of these programs is essential to the well-being of Canadians."¹⁶ However, while the committee called for common, nationwide standards for education, health care, and social services, it recommended that "in areas of exclusive provincial jurisdiction, standards should be formally established through interprovincial agreement."¹⁷

Throughout the rebalancing discussions, Premier Klein has played a major public role and FIGA has played a major bureaucratic role in maintaining momentum for the initiative among provincial governments across the country.

Throughout, Alberta has advanced a consistent set of themes: although both orders of government may remain active in some fields, there should be less duplication; the constitutional division of powers should be respected; the governments with the jurisdictional authority should have the financial resources to do the job; and unilateral action, particularly by the federal government, must be avoided at all costs. The search is for harmonization arrived at through intergovernmental negotiation.

The rebalancing initiative fits within the international model developed at the outset of this chapter. In Premier Klein's vision, rebalancing means only that Ottawa respect the constitutional authority of the provinces in such fields as health care and social policy; his concern is with unilateral action by a federal government that does not respect the rules of the game. This, I would suggest, is a constant fear of small states such as Canada when dealing with superpowers such as the United States. Hence the desire to tie superpowers down through international agreements and the rules that follow in their wake; to constrain, for example, the US Congress through the obligations of GATT, the WTO, and NAFTA. The Alberta government seeks a federal system of rules and institutionalized consultation; it fears unilateral actions by a federal government within which it exercises little influence. Alberta looks upon Ottawa as Ottawa looks upon Congress, and responds in a similar way. In both cases, the best line of defence against unilateralism is effective intergovernmental relations.

The Klein government's push, in concert with Ontario, for greater provincial input into the determination of national standards for social programs fits neatly into the international model. National standards set by Ottawa and enforced by the spending power allow for unilateral federal action, including retaliatory action against provinces not abiding by Ottawa's interpretation of the standards. Hence the interest in having truly *national* standards — not *federal government* standards — set and policed through intergovernmental mechanisms. The federal government might still participate, but it would have to play by multilateral rules. It would be constrained in a way analogous to how NAFTA constrains the US Congress. What Klein resents more than anything else is the presumption that Parliament can and should police provincial governments operating within their own constitutional domain. As the premier stated just prior to the 1996 Annual Premiers' Conference, the provinces "are not criminals."¹⁸ While in theory Klein rejects the need for *any* external review of provincial government performance, he is willing to accept intergovernmental mechanisms if these can screen the provinces from unilateral intervention by the federal government.

Premier Klein, therefore, has not abandoned Premier Getty's intergovernmentalism strategy; he has simply changed its focus from international and internal free trade negotiations to social policy.¹⁹ In effect, he is broadening and deepening the existing strategy.²⁰ Throughout, however, the premier

confronts a leadership dilemma that also bedeviled his predecessors. The problem is how to assert leadership without having initiatives dismissed as reflecting the idiosyncratic interests of one of Canada's wealthiest provinces. To avoid this stigmatization, Alberta premiers must "hide their light under a bushel," as Lougheed did in orchestrating the 1982 amending formulas. This in turn means that FIGA's role becomes even more important. Effective work behind the scenes, in the bureaucratic trench warfare of intergovernmental relations, is essential.

One of Klein's more interesting intergovernmental innovations is in the field of aboriginal affairs.²¹ If there is a clear "growth area" in intergovernmental relations, it is in aboriginal affairs. The movement toward self-government implies a greater provincial institutional capacity for government-to-government relationships with Aboriginal Peoples. As aboriginal governments take on greater political legitimacy, jurisdictional control and bureaucratic muscle, the need for effective government-to-government relationships will become pressing. In this respect, FIGA's recent merger with Aboriginal Affairs²² marks a significant development in the Canadian practice of intergovernmentalism. Of course, the merger is still in embryonic form, and there are conceptual problems yet to be worked through, along with their institutional consequences. Will aboriginal governments be treated in the same way as provincial governments? Will the same protocols be followed? The same files kept? Will intergovernmental relations with First Nations have the same routing within FIGA? How will FIGA orchestrate its relations with aboriginal organizations inside and outside the province?

Ralph Klein's approach to alliance-building has also been somewhat different from his predecessors, in part because the Quebec governments led by Jacques Parizeau and Lucien Bouchard (notwithstanding some difference between them as discussed by Réjean Pelletier in this volume) have withdrawn from intergovernmental relations to an unprecedented degree. The problem, therefore, has been to find an ally in the intergovernmental arena to replace Quebec. Ontario has been courted for this role, even though during the Lougheed and Getty administrations the Ontario governments appeared to be wedded to a relatively centralized model of federalism that Albertans found difficult to accept. Now, with evidence of ideological convergence between Alberta's Ralph Klein and Ontario's Mike Harris, and with Ontario's apparent embrace of a more decentralized federal state, the opportunities for alliance-building are reasonably good. The other potential ally is British Columbia. However, BC's potential is problematic given its quirky performance on the national stage. For reasons too complex to be explored here, BC has not carried the weight in national political life one would expect from Canada's third largest province. Its premiers, lacking the type of continuity and ballast that FIGA provides for Alberta premiers, have vacillated between disengagement from national political life, on the one hand, and erratic

participation, on the other. (The recent Pacific salmon dispute is an illustration of the latter.) In recent times, the BC government has been preoccupied with a domestic political agenda that has little in common with Alberta's and therefore provides little foundation for alliance-building. The upside of this for Alberta is that BC's performance has created space for Alberta to exercise regional leadership; it has been easier for Alberta premiers to "speak for the west" when BC premiers have been disinclined or unable to do so. Peter Lougheed was particularly fortunate in not having to compete with a strong voice from BC when speaking for the west on the national stage. The downside is that BC is at best an unreliable intergovernmental ally. As a consequence, a strong western Canadian coalition has been difficult to forge, and thus Alberta's still tenuous alliance with the Harris Progressive Conservatives is all that more important.

There is one final detail to note about Klein's intergovernmental record, and that is the winding down of FIGA's international trade promotion activities. The European and American offices have been closed, and only the Asian offices kept open. These cuts coincide with the general budgetary restraint the provincial government has imposed, but balancing the budget was not the prime driver. Of greater significance has been the change in Ottawa's approach to international trade. The current Liberal government has made a concerted attempt to bring the provincial governments into play, an attempt symbolized by the Team Canada trade missions so heartily endorsed by Ralph Klein.²³ Thus there is less need for an independent provincial voice on the trade promotion front. As a senior FIGA official put it, "there is no need to stand up and be heard because we *are* being heard." However, while this may be the situation in trade promotion, Alberta still believes that more could be done regarding provincial involvement in trade policy and trade negotiations. Movement on these fronts remains a priority with Alberta.

It should also be mentioned, with respect to trade promotion, that the business environment has changed. It is no longer the case that Alberta businesses need government help in dealing with European and American markets; the value-added of FIGA's expertise has been reduced to the point where the international offices no longer have a useful role to play. Rather than having the premier speak for the interests of the Alberta business community abroad, as Lougheed did in lobbying Congress, organizations such as the Canadian Association of Petroleum Producers now conduct Alberta's "foreign policy." Only in Asia, where government-to-government relations still play an important role in the economy, is there a continuing rationale for such offices, although even here there has been increased integration with Canada's external representation.

The Klein government's approach to intergovernmental relations can be briefly summarized by noting its general correspondence with Alberta's policy in the past. There has been a consistent attempt to draw the federal government

into multilateral arrangements, and to resist unilateral action by Ottawa. The premier's primary focus, like that of Mr. Lougheed, has been on intergovernmental relations rather than on institutional reform. As a consequence, FIGA continues to play an important role, and it has spearheaded Alberta's involvement in social policy reform. Although its international activities have been reduced, it has taken on the potentially vast responsibilities for intergovernmental relations with aboriginal governments. Finally, FIGA has maintained its constitutional poise, experience, and readiness should Alberta once again be thrust into national unity negotiations in the wake of the Calgary Declaration.

STAYING THE COURSE

The history of Alberta intergovernmental relations sketched in above has been marked by a great deal of continuity. To explain this continuity over the past 26 years, a number of factors need to be brought into play:

- there has been, not surprisingly, a basic continuity in the province's demography and economy. Despite widespread perceptions by Albertans of their province's steady growth, Alberta's share of the national population has not changed appreciably over the past 30 years.²⁴ And, although the Alberta economy was badly rocked in the early 1980s, economic performance generally remains above the national average.
- there has been no partisan change of government over this period, and only two changes in premier.
- there has been considerable continuity in Alberta's weaknesses within the country's governing party, and thus within the federal Cabinet. Reform's success in the 1997 federal election confirms the general pattern of chronic weakness on the government side of the House. However, the notable exception of the Mulroney years, when Alberta ministers Harvey Andre, Joe Clark and, most importantly, Don Mazankowski were leading figures in the federal Cabinet, shows that there is more to the Alberta story than simply weakness within the national government. When that weakness was replaced by disproportionate strength between 1984 and 1993, the by-then well-established patterns of intergovernmentalism were not significantly disrupted. Thus the strategy described in this chapter may now be more than a necessity: it may be seen as preferred and optimal.
- there has been a great deal of continuity in FIGA's personnel. Many of the key players have had decades of experience with FIGA, and thus with the broader intergovernmental system. Oryssia Lennie, for

example, was in place by 1971, before the department even existed, and did not leave until the spring of 1997 when she resigned as FIGA's deputy minister to take up a position with the Office of Western Economic Diversification. FIGA's principal international trade expert, Helmut Mach, has been with the department since 1973; Garry Pocock, who heads the Canadian federalism team, has been with FIGA for close to 20 years, and Francie Harle, a central player in the reform of social policy, has extensive experience. Note should also be made of long-serving ministers, particularly Jim Horsman.

- the consistent intergovernmental relations strategy is based on a well-articulated understanding of Canadian federal institutions. In part, this intellectual coherence was the product of Dr. Peter Meekison's long tenure as deputy minister, although it is clearly manifest throughout the department.

It is important, however, not to overstate the consistency, for there have been some important tensions. If we look back at the evolution of Alberta's intergovernmental strategy, two apparent incongruities must be addressed. The first arises from the province's renowned enthusiasm for Senate reform,²⁵ and the second from its populist tradition. At first glance, both would appear to be inconsistent with a heavy emphasis on intergovernmentalism.

It has long been recognized in the province that intergovernmentalism, as expressed through First Ministers' Conferences and the like, fails to address a critical issue of institutional design, and that is the provision of adequate regional representation *within* the councils of the federal government. No matter how elaborate the mechanisms of intergovernmental consultation and negotiation, or how extensive the devolution of powers, there is still a need for effective regional representation within the national government. If this need is not met, then the federal government will be captured by those regional interests — read central Canadian interests — that are represented within its ranks. The Alberta government's first and still preferred solution to this problem was an intergovernmental solution. In 1982 Alberta first advanced a proposal to replace the Senate with a House of the Provinces in which the provincial governments, through their appointed senators, would be brought into the federal Parliament.²⁶ Thus the House of Commons and the federal Cabinet would be constrained by provincial government representatives *in Parliament*. The House of the Provinces, therefore, would complement other forms of intergovernmentalism. It would expand, rather than challenge, intergovernmentalism as a model of governance for the Canadian federal state.

Initially, then, there was no conflict between the province's intergovernmental strategy and the pursuit of Senate reform; they were two sides of the same coin. However, the House of the Provinces model failed to attract public support, and in 1983 a legislative committee chaired by MLA David Anderson

held public hearings across the province to determine what type of Senate reform Albertans would support. The committee returned with clear and unequivocal public support for an *elected* Senate. The premier at the time, Peter Lougheed, was aware that an elected Senate could be a powerful competitor to provincial governments, and that elected senators would diminish the political authority and influence of provincial premiers as regional spokespersons. More broadly, and as the American experience suggests, an elected Senate would weaken intergovernmentalism by strengthening the capacity of the federal parliament to reflect regional interests and diversity. However, these concerns were difficult to inject into the public debate, and Lougheed was left with no option but to sign on as a reluctant supporter of a Triple E Senate — elected, equal, and effective. The premier had been blind-sided by his electorate, and by a public debate beyond his control mobilized by non-governmental actors such as the Canada West Foundation and the Committee for a Triple E Senate, and then later and with much greater force by the Reform Party of Canada.

The real anomaly with respect to Senate reform was not Lougheed's House of the Provinces, which would have strengthened intergovernmentalism as a mode of government, but rather Don Getty's enthusiasm for a Triple E Senate. Whether he was oblivious to the likely impact of a Triple E Senate on Alberta's intergovernmental strategy, or whether he simply did not care, whether he believed in a larger constitutional and national unity good that might be promoted through Senate reform, is still unclear. It should also be noted, however, that by the time he became premier, public opinion within the province was solidly behind the Triple E model, and it is unlikely that Getty had any alternative but to join the parade he then led through intergovernmental negotiations. Even the formidable Peter Lougheed had been unable to control or direct the Senate reform debate. The more general point is that the Alberta government is no longer a hegemonic player with respect to constitutional politics in the province. Albertans rejected its proposal for a House of the Provinces, would have rejected the Meech Lake Accord had they been able to get their hands on it, and then voted against the Charlottetown Accord despite Getty's (admittedly lukewarm) support. When the Alberta government takes its intergovernmental strategy out in public, it routinely encounters a very rough reception indeed.

The second incongruity arises from Alberta's populist tradition. Intergovernmentalism as a model of governance stands at the polar extreme from populism. By its very nature, intergovernmentalism takes place away from the public eye. It is everything the public came to despise about the process that gave birth to the Meech Lake Accord: secretive, carried out by men (and an increasing number of women) in suits, and averse to public ratification. How, then, do we explain the Alberta government's commitment to a style of governance so at odds with populist traditions? Part of the answer

comes from realizing that the populism generally practised in the province has been a form of *executive populism* that is not mediated through legislative assemblies²⁷ or, for that matter, through political parties. Premiers have eschewed the populism of direct democracy for a personal relationship with the electorate that does not require verification through legislative debate or referendums. This style of populism, where premiers speak for the province in intergovernmental forums, is quite compatible with intergovernmentalism as a style of governance and as the primary means by which Alberta's presence is asserted on the national stage. It was perfected by Lougheed, although adopted with less comfort by Getty and much less comfort by Klein.

Yet this is only part of the answer, and the tension between populism and intergovernmentalism remains. To this point, however, it is the Reform Party that has effectively mobilized more conventional populist sentiment, leaving the provincial government and its premier free to follow executive populism that by-passes the legislature and relies on public consultation through government-appointed boards and task forces. (In the fall of 1997, for example, the provincial government hosted a hand-picked economic summit as an alternative to a fall session of the legislature.) Where executive populism and Reform's more conventional populism are likely to collide is in any public debate within the province on constitutional reform. Premier Klein's intergovernmental hands may be tied with respect to constitutional politics by his determination not to discuss the constitution behind closed doors, and by his insistence on public ratification of any constitutional deal that might be struck. As he stated at the Edmonton Premier's Dinner on 8 May 1997, there will be no backroom deals, no closed-door negotiations and, most importantly, "no constitutional changes will occur unless approved by Albertans in a referendum." Thus on the constitutional front Klein is prepared to accommodate the populist impulse of the province, although his active participation in the process leading up to the Calgary Declaration shows he is not stridently opposed to the more conventional aspects of intergovernmentalism.

FUTURE CHALLENGES

The short-term future of FIGA and the province's intergovernmental strategy have been laid out in FIGA's most recent business plan, tabled during the spring 1997 session of the legislature.²⁸ The *Business Plan* identifies a number of goals that flow naturally from Alberta's experience over the past 26 years:

- a restructured federal system that "more clearly defines the roles of federal and provincial governments, reduces intergovernmental overlap and duplication, and provides greater clarification of responsibility and accountability;"

- effective strategies for strengthening national unity, and asserting "Alberta's long-term interests as an equal partner in Confederation;"
- an open domestic and world trading system;
- an active, targeted international role for Alberta;
- enhanced aboriginal participation in government processes and the economy; and
- helping Métis settlements become self-reliant communities.

Former premiers Peter Lougheed and Don Getty would have been perfectly happy with these goals.²⁹ Beyond this agenda, however, there are also a number of other issues on the intergovernmental horizon:

- the integration of aboriginal governments into the routine structures and operations of intergovernmental relations;
- the development of outcome indicators that can effectively assess intergovernmental performance. This is not an easy thing to do. How does one assess to what extent Alberta, as one of 13 Canadian governments, shaped the Tokyo round of GATT negotiations? Was the defeat of the Charlottetown referendum in Alberta a black mark against FIGA, or was it ultimately a good thing? Is FIGA accountable for the state of national unity? How does one measure the informal leadership FIGA personnel might provide in intergovernmental councils?³⁰ How do you measure performance when the objective is to stop something from happening?
- keeping the rebalancing initiative alive now that the federal government is no longer under such intense financial pressure and has money in its pocket;
- avoiding intergovernmental polarization between the have and have-not provinces, and thus avoiding Alberta's potential isolation in the intergovernmental community; and
- bringing Quebec back into the intergovernmental fold and, if not, preventing the evolution of intergovernmental mechanisms exclusive of Quebec from providing the *de facto* foundation for a Quebec-less Canada and an independent Quebec.

Most of these challenges illustrate Alberta's continuing exposure to developments on the national scene. As we would expect, Alberta is shaped by more than it shapes the national scene. However, this is not to suggest that the rest of the country has little to learn from the Alberta experience.

GENERALIZING FROM THE ALBERTA CASE

Any discussion of the future of intergovernmental relations in Alberta takes on additional weight if the argument can be made that Alberta foreshadows the future of intergovernmental relations in the country at large. Traditionally, however, it has been difficult to make the argument that the Alberta experience is useful in interpreting the broader Canadian experience. Alberta, it is asserted, is too idiosyncratic; the province is too rich, too conservative (and Conservative), too right-wing, too Reform, or just too weird. It is suggested, therefore, that if one wants to understand the national experience, it is better to start with a more typical province.³¹

In this case, however, the Alberta experience does capture some of the flavour of the more general Canadian experience with intergovernmental relations. In addition, there is little that is idiosyncratic about the challenges looming on Alberta's intergovernmental horizon. Most provinces, for example, will have to find some way to fold aboriginal governments into the patterns and conventions of intergovernmental relations. Performance indicators will not be unique to the Alberta case, nor will Quebec's ongoing challenge to intergovernmental structures and agreements. The challenges Alberta and FIGA are wrestling with are national in scope and implication.

Where the Alberta case is idiosyncratic is in its political environment, although even here Alberta shares some similarities with other provinces. In bringing this discussion to a close, therefore, it is important to mention two major environmental changes that have occurred. In the past, and particularly during the tenure of Peter Lougheed, the Alberta government's ability to speak for the west in national politics was facilitated by British Columbia's erratic and/or subdued intergovernmental performance. Alberta's star shone so bright in part because British Columbia's star shone so dim; BC premiers never achieved the national stature enjoyed, for instance, by Lougheed. However, it appears that the current government of British Columbia is determined to be a more assertive player, if not necessarily a more constructive player, on the national political stage. Certainly it is difficult to look at the recent salmon dispute and come to any other conclusion. The challenge for Alberta will be to yoke a more engaged and assertive British Columbia to its own federal vision and provincial interests.

Second, Alberta's intergovernmental strategy was developed during a time when there was no strong federal partisan voice for the west. In terms of federal parties, the west spoke with a fractured and/or ineffective voice. The federal Liberals were relatively weak across the region, although more so in Alberta than elsewhere; the New Democrats had a relatively weak Ottawa presence; and the Progressive Conservatives were on the opposition side of the House for a good deal of the time. Thus premiers in the west, and Alberta premiers in particular, did not have to compete with strong federal partisan voices from

the region. This has changed with the arrival of Reform, and with the almost hegemonic presence of Reform MPs in Alberta and British Columbia following the 1997 general election. Thus premiers will have to compete with Preston Manning in speaking for the west, and Manning has demonstrated great ability in mobilizing regional opinion. Admittedly, Peter Lougheed had to compete with Joe Clark from 1976 to 1983. However, Clark led a more broadly based national party than does Manning, and was therefore more constrained as a regional voice. If Reform is able to establish a bridgehead in Ontario, Manning may also be constrained. Indeed, even the attempt to establish a bridgehead may soften Reform's regional voice, and thereby give more room for Ralph Klein. Nonetheless, a strategy that relies so exclusively on intergovernmental relations may make less sense at a time when Reform has such a powerful regional presence in the House of Commons.

Finally, it should be stressed that the dilemma Klein faces in reconciling a populist political culture with intergovernmentalism is not his dilemma alone. Since the engagement of the Canadian electorate in the 1992 referendum on the Charlottetown Accord, it has become increasingly difficult to exclude the general public from intergovernmental affairs. At the very least, this is the case in the constitutional arena, and the effects of public participation in constitutional decisionmaking could well ripple throughout the political system more broadly defined. In the extreme, one could argue that there is a growing gulf between the intergovernmentalism preferred by political elites and the populist impulse of the mass public. What makes this gulf even more problematic is that powerful partisan actors, most notably Reform but also the Parti Québécois and the Bloc, will act as watchful policemen to ensure that the public is in fact involved. Therefore Premier Klein's balancing act in the years to come between intergovernmentalism and populism may have important lessons for the country at large.

NOTES

I would like to thank Wayne Clifford, Francie Harle, Oryssia Lennie, Helmut Mach, Jim Ogilvy, Garry Pocock and Paul Whittaker for sharing their insights into the evolution of intergovernmental relations in Alberta. Of course, they should not be held responsible, either singly or collectively, for the conclusions of this paper, the assessment of FIGA, or any errors or omissions. I would also like to thank Nancy MacDonald Lizotte for her assistance and guidance.

1. This modeling exercise comes from an observer of domestic politics and should be taken with a large grain of salt by students of Canadian-American relations. The objective of the present exercise is to shed light on Canadian intergovernmental relations, and not on the Canadian-American relationship.
2. In practice the mouse may try to cozy up to the elephant in all sorts of ways, including by playing golf. Canada's avoidance of bilateralism has often been

- coupled, although not comfortably, with the claim to a special relationship with the United States.
3. FIGA was not the only department of intergovernmental relations to be established during this time, and indeed was patterned after an earlier Quebec initiative. However, in no other case was such a department so central to its province's political strategy on the national scene.
 4. The three prairie provinces had met before as the Prairie Economic Conference. WEOC marked BC's first participation, and paved the way to the annual Western Premiers' Conference.
 5. Department of Federal and Intergovernmental Affairs, *First Report*, 13 January 1975, p. 19.
 6. When Ralph Klein became premier, he also acted as FIGA's minister, thereby reinforcing FIGA's established institutional position at the heart of the provincial government.
 7. 13 May 1976. Cited in FIGA's Fourth Annual Report, 31 March 1977, pp. 1-2.
 8. As it turned out, this is not quite true; federal legislation in 1995 which "lent" Parliament's veto to each of the five regions in effect altered the amending formula.
 9. Small operations predated the Lougheed years, but took on a much greater role during those years. Alberta first appointed an Agent General in London in 1925, although the position was then left vacant from 1931 to 1948. A Tokyo office was opened in 1970.
 10. Alberta Federal and Intergovernmental Affairs, *Alberta's International Offices: Report to the Alberta Legislature*, Edmonton, April 1991, Appendix V.
 11. *Ibid.*, p. 2.
 12. *Ibid.*, p. 13.
 13. This hope is picked up as a consistent theme in FIGA's annual reports. Note, for example, the third report: "The recent pattern of federal-provincial relations suggests that the provinces have had a more significant role in shaping national policy decisions than in previous eras. As the provinces have gained experience and confidence in negotiating they have been more successful in contributing to final decisions rather than simply reacting to federal initiatives." September 1977; p. 27.
 14. Alberta Select Special Committee on Constitutional Reform, *Alberta in a New Canada: Visions of Unity* (Edmonton, March 1992), p. 13.
 15. An address by the Honourable Ralph Klein to the National Chapter of Dialogue Canada, Ottawa, 26 September 1996.
 16. *Alberta in a New Canada*, p. 20.
 17. *Ibid.*
 18. Robert Mason Lee, "The Plan to Replace Momma Ottawa with Executive Provincialism," *The Globe and Mail*, 24 August 1996, p. D2.

19. Klein, however, has abandoned Getty's enthusiastic interest in Senate reform. The 14 September Calgary Declaration so strongly endorsed by the Alberta premier is silent with respect to institutional reform.
20. The National Child Benefit initiative, described by Lazar in this volume, neatly captures Alberta's approach to social policy reform. Ottawa is to provide more money for income support, but social services support programs will be under provincial control, with national standards set by intergovernmental agreement.
21. Although Premier Klein's personal interest and involvement in aboriginal affairs is a departure, it should be noted that Don Getty chose to become directly involved in the Lubicon dispute.
22. This merger has been described as the guppy swallowing the whale, given the much larger budget of Aboriginal Affairs. However, FIGA's staff resources were larger. Shortly after Alberta's lead, Saskatchewan and New Brunswick announced that they, too, would be moving in the same direction.
23. The communiqué issued at the conclusion of the 1995 Western Premiers' Conference in Yorktown, Saskatchewan, notes that the Team Canada concept "originated with British Columbia and was brought to the First Ministers' table by the Western Premiers," 2 November 1995, p. 3.
24. Alberta's share of the national population has increased from 7.5 percent in 1971 to 9.3 percent in 1996.
25. For the best statement on Alberta's Senate reform position, see *Alberta in a New Canada: Visions of Unity*.
26. Government of Alberta, *Harmony in Diversity: A Reformed Senate of Canada* (Edmonton: Government of Alberta, 1982).
27. The provincial treasurer has just announced that the Alberta legislature will meet only once a year.
28. Federal and Intergovernmental Affairs, *Business Plan 1997-1998 to 1999-2000*, tabled in the Legislative Assembly, 21 April 1997.
29. A similar set of goals is identified in FIGA's Twenty-Third Annual Report, tabled 31 March 1996.
30. To this point, FIGA has relied on a five-point client satisfaction rating as its primary performance indicator.
31. This could not be an Atlantic province (which would be too small and too poor), Quebec (which, after all, is distinct, or at least unique), Manitoba or Saskatchewan (which are too rural) or British Columbia (which is too weird). The appropriate national template must therefore be found in one of the other provinces.

Ontario and the Federation at the End of the Twentieth Century

Sid Noel

Cet article analyse le rôle changeant de l'Ontario dans la Confédération. Il porte une attention particulière aux effets de la volatilité électorale de la province depuis 1985 et aux pressions externes auxquelles la province a de plus en plus été sujette, notamment les tendances vers la globalisation de la production et des marchés et le choc du référendum québécois de 1995. Il trace les changements et les continuités du rôle de l'Ontario dans la fédération sous le gouvernement de Harris, avec une attention particulière aux questions fiscales et constitutionnelles. L'article argumente que l'Ontario va probablement continuer à cultiver des liens économiques et politiques plus étroits avec les états américains voisins dans la région des Grands Lacs, mais que la nature et la proximité de ces liens, et que la place future de l'Ontario dans la Confédération, dépendront probablement de façon significative sur si le Québec demeure partie du Canada.

For five generations Ontario has always been seen as the big guy at the end of the bar who would pick up the tab at the end of the night. Those days are gone.

Bob Rae, 1994¹

INTRODUCTION

Ontario's role in Confederation is commonly held to be a function of its disproportionately large population and economic strength. With approximately 11 million people, it is home to more than 37 percent of the Canadian population, which makes it more than 50 percent larger than Quebec, the province

with the second-largest population; it produces more than 40 percent of Canada's gross domestic product; and it is the country's dominant financial, communications, and manufacturing centre. Politically, it occupies a large and sometimes seemingly commanding position in the national government — as at present, when, as a result of the 1997 federal election, 101 of the 155 seats held by the governing Liberal party are in Ontario.

Facts of this kind, however, while useful as background, by themselves explain very little. Ontario's relations with the federal government, for example, have never varied significantly according to the number of Ontario representatives in the federal governing party. Nor have its relations with the other provinces ever been simply a matter of demographic or economic *force majeure*.² Rather, both sets of relations have typically been complex and multifaceted, shaped by institutions and experience, by transformative events such as the energy crises of the 1970s, the constitutional changes of 1982 and the Quebec referendum of 1995, by trade-offs and exigencies that often run counter to the seemingly intractable facts of demography and economics — and even, at times, by the party in power.

INTERNAL TENSIONS AND EXTERNAL PRESSURES

What I wish to show in this chapter is that Ontario's federal-provincial and interprovincial relations at the end of the twentieth century are being radically refashioned, primarily through a conjunction of internal political and cultural tensions and external threats and pressures. The internal tensions arise from the growing dissonance between two of Ontario's most deep-seated values, both of which have roots that go back far in the province's history and remain firmly imbedded in its political culture. The first of these values is the strong, patriotic attachment of the Ontario people to the Canadian nation. The second is their widely shared consensus on the primacy of economic goals, for themselves as individuals and for their communities — in other words, their "imperative pursuit of economic success."³ The external pressures arise from the threat of national disintegration, which the Quebec referendum shock of 1995 raised to an unprecedented level; from the southward pull of the United States, which has grown steadily more powerful and pervasive — economically, culturally, and politically — since the Canada-US Free Trade Agreement of 1988; and more generally from trends toward the globalization of production and markets.

During most of the past century, Ontario's attachment to Canada and its economic aspirations have generally been compatible, or at least not obviously in conflict. The only extended period of constitutional and political conflict between Ontario and the federal government occurred in the 1870s and 1880s, over the province's disputed claims to civil jurisdiction and

territory.⁴ By 1890, however, those disputes had been resolved in Ontario's favour, thus giving successive Ontario governments of whatever party little reason to be dissatisfied with the basic structure or operation of the federal system. As a result, there evolved a distinctive Ontario approach to Confederation that may be characterized as supportive and conciliatory — but also more than a little proprietorial and backed by a strong presumption of leadership (typically exemplified by the Ontario premier) in the promotion of national unity.

There were, of course, exceptions to this general pattern. Disputes between the Ontario and federal governments over fiscal and social policy issues were not uncommon. For example, in the late 1930s there was a fierce confrontation between the Hepburn government and Ottawa over the funding of "relief" (welfare) expenditures, the division of tax powers, and virtually every other aspect of what were then called "Dominion-Provincial" relations.⁵ Three decades later the Robarts government engaged Ottawa in a war of words over the financing of medicare.⁶

In more recent times, there were two major rifts that had wide political ramifications for the federation. The first rift came in the 1970s and early 1980s and was more interprovincial than federal-provincial: when the Davis government supported the federal government against the Alberta government on the federal National Energy Policy.⁷ The second, and more politically divisive within Ontario, was the brief but acrimonious skirmish between Ontario and the federal government (and to a certain extent between Ontario and most of the other provinces) over Canada-US free trade in 1988, which the Peterson government vociferously opposed.⁸

In the following years, however, a looming constitutional crisis increasingly overshadowed all other issues. Though lingering disputes over economic, fiscal, and social policies remained, they had little or no effect on Ontario's constitutional stance, which remained constant even through changes of government and under premiers of different political stripe: Liberal David Peterson played a constructive and highly conciliatory role in efforts to rescue the doomed Meech Lake Accord in 1990 and his successor, New Democrat Bob Rae, played a similar role in support of the equally doomed Charlottetown Accord in 1992.

In retrospect, the failure of those two major constitutional initiatives may be seen as marking a turning point in Ontario's relations with the federation. Successive Ontario premiers had played leading national roles in support of measures that they believed were not only or even primarily in Ontario's interest, but in the general interest of Canada. While their aim, above all, was to accommodate Quebec and secure its formal assent to the 1982 *Constitution Act*, in the negotiations leading to the Charlottetown Accord, Premier Rae had also played a key role in securing the adoption of additional clauses designed to recognize the claims of native peoples and strengthen the economic and

social bonds of Canadian union. Both Peterson and Rae had shown a degree of personal commitment to the respective accords that was matched by few other premiers or even members of the federal Cabinet; both had campaigned passionately across the country and in the full glare of the national media, even as opposition mounted; and both had spent freely of their own and Ontario's political capital in the process.⁹ But in the end their efforts had proved futile and perhaps even counter-productive, since the intervention of Ontario premiers is not unknown to cause resentment in other provinces. In a final irony, both Meech Lake and Charlottetown, which were supposed to promote national unity, proved hugely divisive even within Ontario. Their eventual defeat, moreover, had dire consequences. In effect, after the failure of the Meech Lake Accord to secure ratification, and the rejection of the Charlottetown Accord in a national referendum (in spite of being approved in Ontario by the narrowest of margins), Ontario's approach to Confederation lay in ruins.

The Rae government had no alternative to offer. Exhausted and financially beleaguered, its only recourse on the intergovernmental front was to engage the federal government in a series of acrimonious fiscal disputes, centring mainly on the costs to the Ontario treasury of federal cuts to transfer payments to the province in the areas of health, education, and social welfare.¹⁰ In 1995 — like the Peterson government in 1990 — it suffered a crushing electoral defeat.¹¹

ENTER THE COMMON SENSE REVOLUTIONARIES

The new government of Mike Harris that swept into power at Queen's Park in June 1995, winning 82 of 130 seats, represented a new force in Ontario politics. While nominally Progressive Conservative, it bore little resemblance to the moderate, centrist, pragmatic PC dynasty that had governed Ontario from 1943 to 1985.¹² After 1990, under Harris's leadership, the PCs had been recast as a party of the conservative right — a party whose ethos and policy prescriptions more closely resembled those of state Republican parties in Michigan and New Jersey, the Klein government in Alberta, and the federal Reform Party of Preston Manning, whose mixture of anti-government rhetoric and populist sentiments it faithfully echoed. In the 1995 election campaign, it all but dropped the word "Progressive" from its label (in favour of "Conservative" or "the Harris party"). It also assigned great prominence to its manifesto, a document titled *The Common Sense Revolution*, which outlined in bold relief an agenda of radical right-wing reform for Ontario.

During its first two years in office, the Harris government pushed ahead with its agenda with revolutionary zeal — repealing the previous NDP government's labour and social legislation, cutting taxes, drastically reducing the

size of the public service, and fundamentally restructuring the whole system of public administration and finance of the province, from welfare to health to education to local government.

These initiatives were all domestic. *The Common Sense Revolution* had included no mention of federal-provincial relations or the constitution, and from the start the Harris government seemed determined to give such matters the lowest possible priority. Unlike Bob Rae, who had combined the post of minister of intergovernmental affairs with the premiership, Mike Harris, in forming his Cabinet, combined it with the women's issues portfolio (another area not held in notably high regard by Conservatives) and awarded it to Dianne Cunningham, a London MPP and former PC education critic. She was also one of the few unrepentant progressive conservatives left in the party after 1990, when she had run against Harris for the party leadership.¹³ The outlook for her ministry did not seem auspicious. But on the few occasions when intergovernmental issues did arise, Cunningham proved to be a steady back-up performer to Harris (playing *pianissimo*, as it were, to the premier's *basso profundo*), and events were unfolding that would soon improve her ministry's prospects.

The politics of the federation have a way of intruding upon domestic agendas — as the Harris government discovered in October 1995, barely four months after taking office. This time the intrusion came with a jolt, rudely delivered by the Quebec sovereignists. The Quebec referendum had for the most part been viewed complacently in Ontario, at least until the very end, when it appeared that the unthinkable might happen and the sovereignist side might actually win. As it turned out, the federalist side won by a mere 54,288 votes out of more than 4,757,509 cast and with the support of only 40 percent of francophones — a shocking reminder of the country's parlous state of near-disintegration. The national unity issue was again unavoidably a matter of urgent concern, and however unwelcome the prospect, over the next two years the Harris government was forced to grapple with it. What gradually emerged from the Premier's Office and the Ministry of Intergovernmental Affairs — after some initial floundering — was a reappraisal of Ontario's core interests and the outline of a radical new approach to Confederation.

THE PREMIER SPEAKS

Every Ontario premier is expected to play a prominent role in constitutional and intergovernmental affairs, as perhaps befits the sense Ontarians have of their province's preeminence in the federation and the large economic and emotional stake that they have traditionally invested in its continuing viability. But the cruel reality is that these areas have become a source of intractable contestation within Ontario, and for successive premiers they have led only to

political failure and frustration. Unlike Oliver Mowat — who in 1884 had basked in public adulation following his constitutional victories over the federal government, being feted from town to town and paraded like a conquering hero through the streets of Toronto¹⁴ — no modern premier, except perhaps John Robarts, has made any political gain from involvement in intergovernmental affairs, and most have suffered losses. For David Peterson and Bob Rae, the losses were politically devastating.

Mike Harris thus had good reason to avoid becoming too deeply involved in intergovernmental affairs, especially those involving constitutional issues; but, as Ontario's premier, he could not avoid them completely or for very long. His first intervention, on 10 June 1995, just two days after the election, was brief but revealing: the way to make Confederation work, he said, was to demonstrate that "we can make changes in federal-provincial powers and jurisdictions ... I think this will go a long way to convincing Quebecers that Canada can work as a country." On fiscal matters, he expressed no objection to the federal cuts in transfer payments that had so antagonized Bob Rae. He himself had run on a platform of deficit reduction, and he professed only sympathy with the federal government's deficit reduction efforts. But, he pointedly added, in the fields of health care and social programs "I think it will be incumbent upon the premiers to take a leadership role in setting national standards ... They [the federal government] don't have the dollars any more, so they're saying to us, 'Look, we want out of a number of these areas'."¹⁵

These statements accurately signalled the key elements in the Harris government's future approach to intergovernmental relations: its preference for reforming Confederation through non-constitutional means, its insistence on the need for a rejigging of program responsibilities and for greater flexibility in federal-provincial financial arrangements, and its expectation of a *quid pro quo* from the federal government in return for Ontario's assuming an increased share of the costs of social programs. This approach was more fully elaborated during the following months.

In August, shortly before attending his first premiers' conference, Harris stated "I think that it is very clear that the status quo is not acceptable to Ontarians ... we're prepared to look at changes in the way the federal government and the provinces operate." At the conference, he was more specific: in his view Ottawa had "disqualified itself" from having a major role in overseeing social programs. "We believe, he stated, "that if the federal government withdraws more and more dollars from social programs and from health care ... we require increased flexibility as to how those dollars are spent and how we meet objectives."¹⁶ The conference ended with the premiers divided over the future federal role along predictable "have" and "have not" lines.

In October, shortly before the Quebec referendum, Harris made his first direct foray into the national unity debate, in a speech delivered before the Canadian Club of Toronto. He avoided long-standing and contentious

constitutional issues, such as the recognition of Quebec as a "distinct society." Instead, he delivered what was obviously intended as a "common sense" warning to Quebecers. If they voted yes, he said, they would be voting to deprive themselves of "the Canadian advantage," for, "if Quebec separates, there would be international borders between Ontario and Quebec. And borders do matter." From Ontario's point of view, he added, the sovereigntist "partnership" proposal (referred to as an "agreement" in the referendum question) was simply a "non-starter." Then, warming to his favourite theme, he proposed as an alternative to separation "a more functional federation, that streamlines governments, that eliminates waste and duplication of services. This kind of change will be supported by Ontario. Change that gives better value to the taxpayer."¹⁷

"I have to get a grip on my natural tendency to laugh at that," Jacques Parizeau derisively responded.¹⁸ But on referendum night, after the votes were counted, it was a very different "natural tendency" that the Quebec premier displayed. "Money and the ethnic vote," he famously alleged, were responsible for the yes side's narrow loss. Soon thereafter he resigned and was replaced by his ally and nemesis, Lucien Bouchard.

THE REFERENDUM SHOCK AND ONTARIO'S RESPONSE

Prior to the referendum, the Harris government's relations with the federal government had been generally low-key and amicable, if not entirely harmonious. The open hostilities that had existed during the latter part of the Rae government's tenure, for example, were conspicuously absent. As Ottawa wished that all premiers would do, Harris had largely stayed out of the national unity debate, apart from his Canadian Club address, but in it he had said nothing that could not equally have been said by Jean Chrétien. And on a range of practical issues, Intergovernmental Affairs Minister Dianne Cunningham and Finance Minister Ernie Eves had been quietly building better relations with their federal counterparts. Eves, for example, had been receptive to the idea of a blended consumption tax to replace the GST (which, among other benefits, would relieve the federal Liberals of one of their more awkward election promises).

In the aftermath of the referendum, however, Ontario-Ottawa relations quickly soured. Late in the referendum campaign, with a yes vote seeming more likely with each poll, Prime Minister Chrétien had suddenly promised to support the constitutional recognition of Quebec as a "distinct society" if Quebecers voted no — a promise that was empty without Ontario's cooperation, since, under the amending formula, the approval of seven provinces containing 50 percent of the population was required.¹⁹ Harris, however, resolutely resisted being drawn into the "distinct society" camp, no doubt in part because of the unfortunate examples of Peterson and Rae, but more

immediately, and probably more importantly, because of the informal alliance that existed between his provincial PC party and Preston Manning's Reform party. "Unless you have that coalition, you don't get elected," Harris once candidly explained.²⁰ Reform had surged in popular support in the west, and to a lesser but still substantial degree in Ontario, in part by channelling popular opposition to the constitutional recognition of Quebec's distinctiveness, and there had been considerable clamour by Ontario Reformers to contest the 1995 Ontario election. But Manning had vetoed the project, and without their own party's candidates in the field, which would have split the right-wing vote, Ontario Reformers had swung massively behind Harris and were an important factor in his victory.

Following the referendum, therefore, Harris found himself classically cross-pressured between the Reform component in his Conservative coalition and the Liberal federal government. Not surprisingly, he refused to support the latter's proposed distinct society amendment. Had he done so, he would have split his party and, in any case, it was probably not his inclination. Prime Minister Chrétien and his government were thus placed in an embarrassing position, albeit one that was primarily of their own making, and ended up lamely substituting a parliamentary resolution for the promised amendment.²¹

Inevitably, the Quebec referendum raised serious doubts about the way Chrétien and his advisers had handled the national unity issue. Their overconfidence and miscalculations, Preston Manning rather too gleefully reminded them, had led to a "near death experience." The Harris government appeared to agree. After the referendum, it became noticeably less accommodating in its dealings with Ottawa,²² more open to overtures from Quebec, and more concerned to redefine and ensure the security of Ontario's core interests.

ONTARIO AFTER NAFTA

Paradoxically, any reappraisal of Ontario's position in Canada has to begin with its relationship with the United States. Ontario has always possessed a locational advantage that allowed it to develop important and lucrative economic ties with the US, as exemplified in the twentieth century by integrated auto production under the Canada-US Auto Pact. At the same time, Canadian tariff protection helped to establish Ontario's place as the dominant supplier of manufactured goods to the Canadian market. Hence, it was commonly held, Ontario enjoyed the best of both worlds, which accounted in large measure for its enduring prosperity, political stability, and untroubled identification with the Canadian nation. By extension, it could afford to be the largest net contributor to the federal treasury, since the bulk of federal equalization payments and other transfers to the poorer provinces eventually recirculated back to Ontario through the purchase of Ontario-made goods. In other words,

Ontario's political and economic interests were assumed to be practically synonymous.

By the mid-1980s, however, this assumption had become more than a little suspect. The Ontario economy had drifted far toward economic integration with the US, trade was becoming globalized, and the bonds of Canadian unity had become frayed and tenuous. Ontario's opposition to the Canada-US Free Trade Agreement of 1988 is not easily explained in purely economic terms.²³ The business community was strongly in favour of the FTA, and while free trade was expected to cause serious problems in some industries, the Ontario economy as a whole was well-positioned to reap major benefits, as eventually it did. Ontario's opposition, then, may be seen as primarily a matter of culture and identity — an unwillingness to see Canada become more like the US in social and political values, or to dissolve the east-west economic bonds that still symbolized for Ontarians the ideal of a transcontinental Canadian state.

Nevertheless, by 1995, after a turbulent decade of political and economic upheaval, the direction of Ontario's future trading pattern had been settled. Under NAFTA it had become overwhelmingly north-south.²⁴ And without a Canadian tariff wall, there was no longer any assurance that federal transfers to the poorer provinces would eventually flow back to Ontario. Though a substantial portion continued to do so, they might now as easily flow to the United States, or for that matter, as global trade increased, to Europe or Asia. The result was a decoupling of Ontario's economic and political interests — a decoupling accentuated by growing regional tensions, fiscal pressures, the resurgence of Quebec separatism after the defeat of Meech Lake, and finally, the cliffhanger Quebec referendum.

The electoral realignment that brought the Harris government to power in 1995 is in certain key respects, a political reflection and counterpart of the economic realignment that had taken place in Ontario during the previous decade. The Harris government, in striking contrast to its predecessors, not only accepts free trade but positively welcomes its effects. Those effects it sees mainly as opportunities — but only if Ontario radically changes its social and political institutions in order to become more competitive. Hence, the consistent thrust of the Harris government's domestic "restructuring" agenda is to bring Ontario into line with "post-NAFTA realities," and in particular with the taxation and social welfare regimes of its American neighbours (and competitors) in states such as Michigan and Pennsylvania. This approach is clearly signalled in the PC election platform, *The Common Sense Revolution*: "We do know that many employers looked at Ontario as a prospective location for expansion or new investment, compared us to other provinces and U.S. states, and then gave us a pass. It doesn't have to be like this."²⁵

The Harris government, moreover, is generally inclined toward an American neoconservative outlook that draws its intellectual inspiration, and its vocabulary, mainly from American models. Implicit in this view is the notion

that Ontario would be a better and more productive place if Ontarians would only become more individualistic and less reliant upon government — in other words, if their post-NAFTA culture matched their post-NAFTA economic environment. It therefore tends automatically to clamp a neoconservative, anti-government, market-based framework upon questions of public policy and to reject, or be uncomprehending of, other approaches. This considerably simplifies governing, since it means that in practice government should always do less and taxes should always be lower. But it also means that its approach to questions of the constitution and national unity, which unavoidably involve complex issues of culture and identity, tends to be narrowly conceived.

ONTARIO AND QUEBEC

In the year after the Quebec referendum, the Harris government's domestic agenda found an unexpected echo in Quebec. During the referendum campaign, Harris's cuts to the public sector had been repeatedly the target of separatist attacks — held up by Lucien Bouchard, for example, as a warning to Quebecers of what they might expect if they remained in Canada.²⁶ As premier, however, Bouchard (who has been known to change his mind on occasion) emerged as a champion of public sector downsizing for Quebec and of the need for more competitiveness — thus apparently placing himself on side with his formerly reviled Ontario counterpart. That, at any rate, was the way the story was spun in the Toronto media, which tended to ignore some salient differences, such as the fact that Bouchard's plan included no large tax cuts and that he had little choice, given what other province's had already done to reduce their deficits.

Harris, meanwhile, had been endeavouring to limit damage to Ontario economy from the referendum result by downplaying, or even denying, its seriousness in speeches to American and Asian investors. "The chances of a separation of Quebec from the rest of Canada are absolutely zero," he proclaimed on one occasion, before an audience of no doubt bemused New York financiers.²⁷ Bouchard's alleged conversion to the tenets of the Common Sense Revolution (or at least to a passable facsimile) was therefore a most fortuitous development. It not only reassured nervous Quebec bondholders that it would likely be "business as usual" whether Quebec separated or not, it also lent valuable credibility to Harris's main point: namely, that Ontario remained an attractive place for international investment.

During 1996 and early 1997 a personal rapprochement of growing warmth developed between the two premiers, including exchanges of family visits and the careful projection in the media of an image of "normal" intergovernmental relations.²⁸ Initially, the national unity question was strictly "off the

agenda." At their Quebec City meeting, in May 1996, Harris and Bouchard focused on very specific concerns, such as their common objection to federal compensation payments to the Atlantic provinces in return for the blending of their sales taxes with the GST. "It's not a secret that on sovereignty or federalism we may have different views," Harris summed up, "but we're here today to talk about things that we agree on, those things that we think are of significant mutual benefit to Canada's two largest and most important provinces."²⁹ Subsequently, however, their rapprochement was underlined by Harris's increasingly vehement rejection of the usefulness of entrenching a distinct society clause in the constitution. Coincidentally, perhaps, but also symbolically, Bouchard was paying a return visit to Harris in Toronto, in March 1997, on the very weekend that the Quebec Liberal party was meeting to adopt a new platform calling for the constitutional recognition of Quebec as a distinct society.³⁰

While Harris is open to attack for "naively playing the separatist game"³¹ — that is, for appearing to reinforce Bouchard's assurances to Quebecers that a sovereign Quebec will continue to enjoy normal, friendly relations with Ontario — there can be no doubt that he has effectively repositioned Ontario on the national unity front. That repositioning shows a marked independence from Ottawa, an implicit willingness to contemplate the possibility of Quebec separation (*pace* the premier's "zero chance" prognostications), and a determination to protect Ontario's specific interests in investment and trade.

ONTARIO AND OTTAWA

Relations between Queen's Park and Ottawa are conducted at so many levels, and through so many channels, that any brief account of them is bound to be incomplete. The following, therefore, is not meant to be a representative, or still less a comprehensive, survey; rather, it is a selective look at three areas of key importance.

FISCAL ISSUES

"We accept a reduction of transfers from the federal government, providing those dollars are going towards the deficit. I'm satisfied to date that they are," Harris stated in June 1995.³² This represented nothing less than a revolution in Ontario's attitude — a 180-degree turn from the position taken by the NDP government of Bob Rae. What made the premier's statement all the more remarkable was that it came just a few months after the federal government's 1995 budget in which a new transfer regime — the Canada Health and Social Transfer (CHST) — had been introduced. The CHST had built into it all of the features that had worked to Ontario's disadvantage under the old regime

and that had been so strenuously protested by the Rae government. And, adding injury to insult, it also slashed payments to the provinces by a massive amount, with Ontario taking by far the biggest cut — no less than 54 per cent of the total for the entire country.³³

It is illuminating to review the immediate background to this issue, and in particular to recall the basis of the Rae government's protests: it was not just that the federal government was downloading the costs of deficit reduction onto the provinces, it was that in the process Ontario was being made to bear more than its fair share. In effect, as Queen's Park demonstrated again and again, Ontario was being systematically short-changed under virtually every transfer program; and virtually every program, whatever its original purpose, tended to turn into an "equalization" program, with Ontario paying a disproportionately large share of costs and receiving a disproportionately small share of benefits. The federal cap on Canada Assistance Plan (CAP) payments, for example, meant that while all other provinces except British Columbia received 50 percent of the costs of social assistance, Ontario received only 29 percent. The total cost to the Ontario treasury was billions of dollars — \$1.7 billion in 1994-95 alone, and \$7.7 billion over five years. Ontario received 53 percent of new immigrants, yet received only 38 percent of federal funding for their resettlement and training (while Quebec, by contrast, received 12 percent of immigrants and 37 percent of funding). Hence, the Ontario government charged, "in the six years between 1990-91 and 1995-96, federal government discrimination against Ontario in job training, immigration and social assistance alone has cost Ontario taxpayers \$12.4 billion, including interest costs."³⁴ A substantial portion of Ontario's budget deficit could thus be directly attributed to shortfalls in federal transfers. "The systematic discrimination against this province has to stop," Rae had declared.³⁵ After the election of the Chrétien government in 1993, "a fair share for Ontarians" was Rae's constant refrain in his attempts to obtain financial redress from Ottawa.³⁶ But it was a refrain that fell on deaf ears: each Liberal budget made matters worse.

This was the situation the Harris government faced with apparent equanimity in June 1995. A new era of fiscal harmony indeed seemed at hand. By the following June, however, after a year of largely fruitless fiscal negotiations over tax policies and fiscal transfer issues, it was clear that the Harris government had effected another 180-degree turn and was now taking a much tougher, more confrontational line in its dealings with Ottawa — an approach that in no essential respect differed from Bob Rae's.

The breach that occurred between Queen's Park and Ottawa over GST/sales tax harmonization is symptomatic of the turnabout. Initially a spirit of optimism and good will had prevailed, as both Harris and Finance Minister Ernie Eves favoured harmonization; but negotiations had stalled in the soured atmosphere of post-referendum politics and, perhaps inevitably, the tax

harmonization issue became entangled with the much larger issue of fiscal fairness. The federal proposal, Eves concluded in December 1995 (echoing former NDP finance minister, Floyd Laughren), amounted to a tax-shift from business to consumers that would cost Ontarians \$3 billion per year "and that is unacceptable."³⁷ Harris and Chrétien met in March 1996, in a final effort to break the impasse but no new proposal emerged. The gulf between the two sides proved unbridgeable, not least because Ottawa showed no inclination to understand the perspective of Ontario's Common Sense Revolution. As an exasperated Eves later commented, "We're not into increasing taxation. We're into reducing taxation."³⁸

Eventually, facing an election with a key promise unkept, the Chrétien government gave up on Ontario and struck a deal with three of the Atlantic provinces (all except Prince Edward Island). That deal, however, was cemented by the promise of federal subsidies, a large portion of which Ontario taxpayers would end up paying, thus further aggravating relations between Queen's Park and Ottawa.

In a speech on 14 June 1996, somewhat ironically delivered before the Council for Canadian Unity, Dianne Cunningham laid out the revised (but also familiar) Ontario line. Her theme was the need for greater fairness in transfer payments and an end to the discriminatory treatment of Ontario. She then proceeded to list, as Rae had done so many times, specific areas where Ontario suffered serious shortfalls, such as Unemployment Insurance and the CHST. Ontarians, she said, had always supported straightforward equalization payments to the poorer provinces, but cannot support the "continued discrimination against our province in other program areas." Revenue shortfalls and discrimination, she argued, were the result of a pattern of flawed, unilateral decisionmaking by the federal government: "This unilateralism has undermined fairness, coherence and stability. It has resulted in an atmosphere of federal-provincial acrimony."³⁹ So much for the new era of fiscal harmony.

REBALANCING

The core of the Harris government's domestic agenda reflects the belief that Ontarians are overgoverned and overtaxed, and that the problem stems from too much bureaucracy and too much duplication and overlap between different levels of government. Its domestic solution, therefore, is a drastic administrative "restructuring." This includes cutting everything from the number of members of the legislature to the number of school boards, "disentangling" the functions and tax powers of the province and its municipalities, and amalgamating many of the latter into larger and supposedly more efficient units.⁴⁰ It would be surprising if so radical an agenda, toward which the government has shown total commitment, did not find a parallel in its inter-governmental relations. In fact, the parallel is extremely close. In

intergovernmental affairs, the Harris government's equivalent watchword to "restructuring" is the "rebalancing" of federal and provincial responsibilities. It is precisely in this area that the Harris government's demands for change differ most strikingly from those of its NDP predecessor. Bob Rae's concept of "fair shares federalism," for example, was not linked to a demand for less government or greater decentralization or more interprovincialism.

The inspiration for rebalancing obviously derives from the Common Sense Revolution, but almost from the start it was also presented as an alternative to constitutional change. "We've got massive duplication. We are over-governed and over-regulated," Harris reportedly told Chrétien in January 1996 (in the unlikely setting of a flight to Bombay as part of a "Team Canada" trade mission), adding, in reference to the Quebec problem, "We've learned that we can't grab the whole enchilada in one package ... So I think we should go at it in bite-size pieces." He left no doubt as to where the first bite should be taken. "Getting rid of government duplication ... will lead to some successes that are more easily achievable (than a constitutional amendment), and the rest will follow," he confidently predicted.⁴¹ Chrétien's response, if any, was not reported.

The force and radicalism of Ontario's rebalancing ideas became more evident in August, at the Annual Premiers' Conference held in Jasper, Alberta. Harris's opening salvo is worthy of note. "I think we can do a lot better than the federal government. The federal government is bankrupt," Harris told the Calgary Chamber of Commerce on the eve of the conference. "It has no dollars. Its ability to intervene financially ... is diminished. Times are changing. It's time for provinces to step forward." Stepping forward, he made clear, meant taking over the setting of national standards in social programs: "While some top-down federalists claim the provinces can't or won't take a national approach, I say we can ... national standards do not have to be federal government standards."⁴²

Harris's speech, while blunt and aggressive, was not mere bluster. In preparation for the meeting, the Ontario government had commissioned a policy paper by Queen's University economist Thomas Courchene, and it was Courchene's paper that underpinned the premier's remarks. The Ontario initiative also built on a proposed set of principles for social programs that had been presented to the first ministers in June in a bland document titled *Report to Premiers*.⁴³ Though little remarked upon at the time, the report was potentially significant because its proposed "mutual consent principles" were defined in such a way as to leave the door ajar to a much greater degree of decentralization.

Courchene's paper, titled "ACCESS" (A Convention on the Canadian Economic and Social Systems), seeks to push the door to decentralization wide open by means of a far-ranging and original analysis that puts specific policy flesh on the bare bones of the *Report to Premiers*. Courchene approaches the

issue from the perspective of "global determinism" — a staple of late twentieth-century conservative ideology. "The assumption," he writes, "is that social policy is undergoing substantial, indeed unprecedented decentralization and the question is: How, in light of this decentralization, do we Canadians reconstitute our internal common markets in the socio-economic arenas?"⁴⁴ The answer, he argues, is to bow to the inevitable and rebalance the federal system to give the provinces a greatly enlarged role in "preserving and promoting the Canadian economic and social union."⁴⁵ Responsibilities in some (mainly financial) "arenas," such as securities regulation, he suggests, might usefully be shifted upwards to the federal government; but the dominant thrust of his recommendations is toward the decentralization of social programs, accompanied by greater interprovincialism in the setting of standards. This, he states, is dictated by "north-south" economic realities, and the implication is unavoidable: it means "that any notion of identical standards across all provinces is a non-starter — much of the negotiation will have to be in terms of principles and 'equivalencies'"⁴⁶ What is needed to ensure the future of "social Canada" is thus the negotiation of a formal (but non-constitutional) "convention" that would form the basis for a fundamentally restructured federation.

Interestingly, Courchene's proposal is very much in keeping with the thought on this subject of an earlier economist, Professor Kenneth Taylor of McMaster University, who was an adviser to Premier Mitch Hepburn and whose views were reflected in Hepburn's speech to the Royal Commission on Dominion-Provincial Relations (Rowell-Sirois) in May 1938. According to Taylor's calculations, Ontario was contributing over 45 percent of federal revenues while receiving only 28 percent of federal expenditures, and was being short-changed across the board. "We are not Midas," Attorney General Gordon Conant told the commission. From the Hepburn government's point of view, the unfair treatment of Ontario resulted from the excessive centralization of powers and both were unacceptable. Hepburn's contribution was to deliver a rambling diatribe in which he argued, *en passant*, that if national programs were essential, then perhaps they would be "better arranged by compact."⁴⁷

ACCESS discusses in complex detail the administrative and legal provisions that such a compact or convention might embody — including possible "framework axioms" and "compliance and enforcement" mechanisms — but its political thrust is uncomplicated. It complements the Harris government's domestic agenda and represents a powerful rationale for the extension of that agenda into the intergovernmental sphere.

Harris's Calgary speech and Courchene's ACCESS paper provoked a predictable furore among the premiers of the have-not provinces,⁴⁸ as the Ontario delegation must have known they would. Harris later diplomatically downplayed his commitment to the ideas expressed, but discussion of them

had dominated the conference. Ontario had delivered its new message, loud and clear.

NATIONAL UNITY

Rebalancing the federation by non-constitutional means and altering it by constitutional amendment are not mutually exclusive alternatives, but, as the Ontario position crystallized, they were treated more and more as though they were. As early as her June 1996 speech to the Council for Canadian Unity, which mainly dealt with fiscal issues, Dianne Cunningham had expressed Ontario's preference for "practical reforms that do not carry the symbolic freight associated with constitutional reform." Premier Harris's view "is that this is not the time for grand pronouncements matched by inaction,"⁴⁹ she had pointedly warned the federal government.

By October, in the wake of Ontario's Jasper initiative, her position had hardened and her tone had become more acerbic. "At the end of the day, I have to tell you, there are questions about how serious the federal government is about finding ways of managing our country based on principles that all the partners in the federation know and accept," she said in a speech to the Metropolitan Toronto Board of Trade. Ontario, she estimated, made a net contribution to the have-not provinces of almost \$15 billion, or 5.2 percent of its GDP. "That is an amount which is roughly equal to our provincial spending on schools, colleges, universities and hospitals combined. Some of this represents a legitimate sharing of the wealth. Some of it does not." She then proceeded to a point by point reiteration of the Jasper initiative. Progress toward rebalancing, she strongly implied, was regarded by Ontario as a test of good faith and a *sine qua non* for Ontario's future cooperation in constitutional matters. Rather than constitutional reform, efforts to "reform the way governments do business with each other" are the way to strengthen the unity of the country. "The time for the grand gestures of the past is long gone. Our Government wants to see some non-constitutional successes before embarking on any constitutional changes."⁵⁰

The rancorous federal election campaign during the spring of 1997 only underlined the deterioration of Ottawa-Queen's Park relations. A shared-cost infrastructure program, for example, prompted a furious response from Finance Minister Eves when it emerged that Ottawa was planning to by-pass Queen's Park and deal directly with Ontario municipalities. Liberal MPs, Eves charged, wanted to use the program as a "slush fund" and go around handing out "little election goodies, door-to-door, municipality to municipality."⁵¹ The election also reopened the split between PCs and Reformers in the ranks of Ontario's Conservative coalition — a split that even members of Harris's caucus flagrantly displayed by taking opposite sides. And, exacerbating matters still further, Preston Manning and the Reform party managed once again to

escalate "Quebec" and "distinct society" into visceral "hot button" issues. With little choice if he wished to avoid a split with Manning, Harris refused to endorse federal PC leader Jean Charest,⁵² whose party was pledged to the constitutional entrenchment of a distinct society clause.

His refusal came as no surprise. Early in April, in Vancouver, he had told a receptive Fraser Institute audience that distinct society "is an old fashioned term for an old-fashioned policy that was a disaster ... Liberals, Conservatives, *The Toronto Star*, all the elites, labour leaders, academics, all said the right policy was appeasement for Quebec and they were all wrong. They were proven wrong."⁵³ Speaking in North Bay on 27 April, on the very eve of the campaign, he again blasted supporters of the notion. "I will say this, and some may consider it controversial," he is reported to have said, "but quite frankly I think those who advocate (distinct society) the most are those who feel guilty about Meech Lake." Ostensibly, the target of his attack was Prime Minister Chrétien: "He wasn't there when we needed him. He was not there! And now he's trying to relive the past. We need somebody to talk about the future." That somebody, implicitly, was not Jean Charest: "I believe any politician who uses those words (distinct society) is not contributing to national unity." Harris's visits to Lucien Bouchard, he evidently believed, had given him a grassroots feel for the issue. "Generally what I hear from Quebecers," he said, "is that when separatists ... hear a politician talk about distinct society, they say 'Boy, are they out of touch'."⁵⁴

ONTARIO'S FUTURE IN (OR OUT OF) CONFEDERATION

In July 1997 Harris and Bouchard were meeting again. This time, they were representing their provinces at the annual Council of Great Lakes Governors in Erie, Pennsylvania.⁵⁵ Their presence at the meeting serves as a useful reminder that Ontario and Quebec both have vital economic, environmental, and other interests at stake in the Great Lakes region, and hence with one another — interests that their governments will have to attend to whatever may be the eventual fate of the Canadian federation.

There is no evidence that the Harris government has taken any concrete steps to prepare a "Plan O" — that is to say, a deliberate strategy to protect Ontario's interests in the event that Quebec votes yes in the next referendum — though it has commissioned studies of possible financial and other impacts of Quebec separation that could form the basis of such a plan.⁵⁶ Meanwhile, the threat of a yes vote hangs uncertainly over Ontario's relations with both Quebec and the federation.

There can be no doubt that the vast majority of Ontarians devoutly hope that Confederation can somehow survive — but beyond that, they share no consensus on what they, or their government, might usefully do to bring about the desired result. Thus, while their traditional sense of attachment to the

Canadian nation remains strong, it is now being tested by their unresolved internal political divisions, and perhaps even more, by the disturbing spectacle of a weakened and regionalized federation whose future is problematical at best.

Since 1985, moreover, Ontario has elected a series of activist governments, each one with an agenda of change seemingly more challenging and conflict-generating than the one before. This has naturally made Queen's Park a prime focus of media attention, in a city that is home to a vast and influential media industry. Over the past decade, therefore, Ontarians have been bombarded by reminders of the importance of Queen's Park in their lives — unlike the preceding four decades of generally bland politics — and the effect has been galvanizing. It has re-connected Ontarians to their provincial government, either as supporters or opponents, and in a curious unintended way, has restored Toronto's status as a major political centre — a genuine capital city. Whether Quebec secedes or not, these developments of the past decade will have an important bearing on Ontario's future intergovernmental relations.

If Quebec does secede, Ontario's immediate reaction will almost certainly be an avowal of renewed support for Canada. At the popular level, the impulse toward a flag-waving show of national unity will be strong, as Ontarians, like other Canadians, will wish desperately to salvage something positive from the ruins of Confederation. At the governmental level, the party in power at Queen's Park will have no choice but to maintain a facade of stability in hope of calming anxious citizens and international financial markets. But once the immediate crisis is over, and the repercussions have been more or less absorbed, deep and perhaps irreconcilable divisions are likely to emerge among the remaining provinces over the federation's future constitutional and financial arrangements.

Ontario's role in a truncated Canadian federation is itself likely to be a divisive issue. Within the province, there would be many who would object to taking on unlimited liability for a union that will be seen as costly to maintain, politically confining, and of dubious economic benefit. In the other provinces, any political arrangement that reflected Ontario's hugely disproportionate population and economic weight would be likely to cause resentment and deepening of current regional antagonisms. If other provinces begin to agitate for the carving up of Ontario in order to "rebalance" the federation (as they may well do, no doubt with the aid of much expert map-making advice), they are likely only to trigger Ontario's determination to preserve its unity — either by insisting on a degree of control over its own affairs that would make the Jasper initiative seem modest, or by its departure. In either case, Ontario would find an attractive and viable alternative at hand. In particular, it might well find that its core interest lies not in preserving at any cost its traditional ties with the west and Atlantic Canada, but rather in using its new-found autonomy to cultivate its emerging role as a "North American region state,"⁵⁷

with a range of associational intergovernmental relations with other similar states, including Quebec. The economic and political advantages of such a re-orientation would be considerable, quite apart from containing the damage that would result from Quebec's secession. It would allow Ontario to get a better grip on its public finances for example, by converting its present open-minded commitment to the financing of redistributive federal programs into straightforward "grants-in-aid" and perhaps redirecting a larger portion of program spending to its own "have-not areas" or to specific priorities, such as the resettlement of new immigrants. Post-NAFTA Ontario already has in place many of the requisites for economic success in such a role, and, with more than 11 million people, the potential to be a political actor of consequence. Historically, Ontario has never permitted its economic and political interests to be out of sync for very long, and the secession of Quebec would very likely accelerate a new convergence.

Alternatively, if Quebec is somehow accommodated, whatever the specific nature of the accommodation might be, it is likely to involve greater provincial autonomy, at least for provinces that have the wherewithal to exercise it — as Ontario, of all provinces, uniquely does. Again, Ontario would have a strong interest in strengthening its association with Quebec and neighbouring US states in the Great Lakes region. The Canadian political context, however, despite its tensions — of which there would no doubt be many, for it would take nothing less than a political miracle to accommodate Quebec without at the same time opening up other deep divisions — would be more hopeful than that which would prevail in the aftermath of a Quebec secession. For Ontario, the federation would again be by far the most important, though no longer the only, focus of its intergovernmental concerns. Confederation and its fractious partners would have survived to fight another day, and that would make all the difference.

NOTES

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1. *The Globe and Mail*, 7 October 1994, p. A4.

2. For a brief overview of Ontario's modern intergovernmental relations, see David Cameron and Richard Simeon, "Ontario in Confederation: The Not-So-Friendly Giant," in *The Government and Politics of Ontario*, 5th ed., ed. G. White (Toronto: University of Toronto Press, 1997), pp. 158-85. For the earlier history see Christopher Armstrong, *The Politics of Federalism: Ontario and the Federal Government, 1867-1942* (Toronto: University of Toronto Press, 1981).
3. This, I have argued elsewhere, is one of the key "operative norms" of the Ontario political culture. For further discussion, see my essay "The Ontario Political Culture — An Interpretation," in *The Government and Politics of Ontario*, ed. White, pp. 49-68.
4. Sid J.R. Noel, *Patrons, Clients, Brokers: Ontario Society and Politics, 1791-1896* (Toronto: University of Toronto Press, 1990), pp. 249-60.
5. See John T. Saywell, *'Just call me Mitch': The Life of Mitchell F. Hepburn* (Toronto: University of Toronto Press, 1991), pp. 376-84.
6. See Allan K. McDougall, *John P. Robarts: His Life and Government* (Toronto: University of Toronto Press, 1986), p. 217.
7. See Claire Hoy, *Bill Davis* (Toronto: Methuen, 1985), pp. 332-48.
8. Peterson "took part in the popular provincial pastime of Fed-bashing, with free trade the issue." Georgette Gagnon and Dan Rath, *Not Without Cause: David Peterson's Fall From Grace* (Toronto: HarperCollins, 1991), p. 94. See also G. Bruce Doern and Brian Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart, 1991), pp. 143-49.
9. Bob Rae later wrote in his memoirs: "I had used up my negotiating resources in the year of Charlottetown ... and just didn't have enough left for what was to follow," *From Protest to Power* (Toronto: Viking, 1996), p. 201.
10. The Rae government's position in these disputes became known as "Fair Shares Federalism." It was backed by extensive statistical research commissioned from Informatrica, an Ottawa consulting firm, and ably presented by Rae himself. See, e.g., his statement entitled "Federal-Provincial Jurisdiction," Ontario Legislative Assembly, *Debates*, 20 April 1994, pp. 5737-38.
11. This is not meant to suggest that the defeat of either the Peterson or the Rae government was *directly* caused by their failures in the intergovernmental sphere, though in both cases those failures were an important *indirect* cause. See Gagnon and Rath, *Not Without Cause*, p. 86; and Rae, *From Protest to Power*, pp. 193-201.
12. Peter Woolstencroft, "More than a Guard Change: Politics in the New Ontario," in Sid Noel (ed.), *Revolution at Queen's Park: Essays on Governing Ontario* (Toronto: Lorimer, 1997), pp. 38-54.
13. Cunningham, a former London school trustee and the only candidate to run against Harris, was backed by the "Red Tory" wing of the PC party. She ran a strong campaign, losing by 1,472 votes (8,881 to 7,189).
14. Noel, *Patrons*, pp. 261-62.
15. *The Toronto Star*, 10 June 1995, p. A12.

16. *The Globe and Mail*, 15 August 1995, p. A3.
17. Ontario, Premier's Office, Notes for an Address by the Hon. Mike Harris, The Canadian Club, Toronto, 12 October 1995.
18. *The Globe and Mail*, 13 October 1995, p. A4.
19. *Montreal Gazette*, 23 October 1995, p. A10. Technically, a constitutional amendment could have passed without Ontario's support if it had the support of Quebec and six other provinces, but since there was no possibility that Bouchard would support such an amendment, Harris's support was crucial.
20. *The Globe and Mail*, 5 April, 1997, p. A4.
21. Canada, House of Commons, *Journals*, 11 December 1995, p. 2232. Kenneth McRoberts writes that "Chrétien felt compelled to keep the promise he had made in the panic of the referendum campaign's last week. After failing to persuade enough provincial premiers to support constitutional recognition of Quebec as a "distinct society," Chrétien resolved to deal with the matter through non-constitutional action." Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity* (Toronto: Oxford, 1997), p. 236.
22. By early 1996, Ottawa and Queen's Park were openly feuding. In response to Ottawa's leaked complaints about "lack of co-operation" from Queen's Park, Harris responded that Ottawa was not dealing "straight up" with Ontario. "There are some around the Prime Minister who play the old political game ... The truth is, we've accommodated the federal government far more than they've accommodated us." *The Toronto Star*, 7 April 1996, p. D1.
23. See Donald. E. Abelson and Michael Lusztig, "The Consistency of Inconsistency: Tracing Ontario's Opposition to the North American Free Trade Agreement," *Canadian Journal of Political Science* 29, 4 (1996): 681-98.
24. In 1981, Ontario's exports were roughly in balance between the other provinces of Canada and the rest of the world. By 1994, while the value of exports to both had grown, only 32 percent of Ontario's exports went to the other provinces and 68 percent to the rest of the world (mainly to the US). Statistics Canada, Provincial Economic Accounts, *Annual Estimates*, 1981-94, Table 3.
25. Ontario Progressive Conservative Party, *The Common Sense Revolution* (Toronto: Ontario Progressive Conservative Party, 1994), p. 14.
26. *Montreal Gazette*, 24 October 1995, p. A10.
27. *The Globe and Mail*, 7 June 1995, p. A8.
28. Harris's amicable dealings with Bouchard contrast sharply with Bob Rae's attitude. Rae saw Bouchard as an unmitigated menace: "if his vision is realized, he's going to hurt us. He's going to hurt all of Canada terribly ... I think he's deluding himself if he thinks that the rest of the country is going to sort of sit back with some quiet resignation and accept the breakup of the country. I don't intend to." *The Globe and Mail*, 8 November 1993, p. A1. See also Rae, *From Protest to Power*, p. 268.
29. *The Globe and Mail*, 31 May 1996, p. A4.
30. *The Globe and Mail*, 8 March 1997, pp. A5-6.

31. "Mr. Bouchard has quite adroitly played the gullible Mr. Harris for a sucker," columnist Jeffrey Simpson wrote. *The Globe and Mail*, 16 April 1997, p. A18.
32. *The Globe and Mail*, 29 June 1995, p. A1.
33. Canada, Department of Finance, *Budget 1995* (Ottawa: Department of Finance, 1995), Table 1.
34. Government of Ontario, "Ontarians Expect Fairness from the Federal Government," April 1995 (pamphlet).
35. Ontario, Legislative Assembly, *Debates*, 20 April 1994, p. 5738.
36. Rae, for some reason, believed that the Chrétien government would be more sympathetic to Ontario's case than the Mulroney and Campbell governments. But he kept insisting that Ottawa review the numbers, while the federal government would discuss only the generalities of program reform. "Talking about social reform without talking about the numbers is a little bit like talking about *Moby Dick* without talking about the whale," Rae complained. *The Globe and Mail*, 7 October 1994, p. A1.
37. *The Toronto Star*, 14 December 1995, p. B1.
38. *The Globe and Mail*, 28 March 1996, p. A2.
39. Ontario, Ministry of Intergovernmental Affairs, Speech by Hon. Dianne Cunningham, Council for Canadian Unity, Toronto, 14 June 1996.
40. For an account of the domestic politics of restructuring, see my essay "Ontario's Tory Revolution," in *Revolution at Queen's Park*, pp. 2-17.
41. *The Toronto Star*, 11 January 1996, p. A12.
42. *The Toronto Star*, 21 August 1996, p. A1; Ontario, Premier's Office, Speech by the Hon. Mike Harris, Calgary Chamber of Commerce, 20 August 1996.
43. Ministerial Council on Social Policy Reform and Renewal, *Report to Premiers*, Ottawa, 1996.
44. Thomas J. Courchene, "ACCESS: A Convention on the Canadian Economic and Social Systems," (Toronto: Ontario Ministry of Intergovernmental Affairs, 1996), p. 2.
45. Ibid.
46. Ibid., p. 5.
47. Saywell, "Just call me Mitch," pp. 380-84. After listening to Hepburn's astonishing 90-minute rant, Commissioner N.W.Rowell suffered a heart attack followed by a stroke from which he never recovered. (Margaret Prang, *N.W.Rowell: Ontario Nationalist* (Toronto: University of Toronto Press, 1975), pp. 496-97. As far as is known, none of those in attendance at the Jasper conference suffered any ill effects.
48. "The premiers of New Brunswick, Newfoundland and Saskatchewan led the charge against the proposals..." *The Globe and Mail*, 22 August 1996, p. A1.
49. Cunningham, Speech, Council for Canadian Unity, 14 June 1996.

50. Ontario, Ministry of Intergovernmental Affairs, Hon. Dianne Cunningham, Speech to the Metropolitan Toronto Board of Trade, 30 October 1996.
51. *The Globe and Mail*, 18 April, p. A7.
52. One of Manning's tactics was to endorse Harris, thus implying that the endorsement worked both ways. In a rally in Harris's home town of North Bay, Manning had declared that he (not Jean Charest) would "bring the Common Sense Revolution to Ottawa." *The Globe and Mail*, 16 April 1996, p. A4. When Harris made an appearance at an Ontario PC party fundraiser in Ottawa, "Manning was there, shaking hands and making himself conspicuous... Reform recruiters stood guard at the escalator...steering Harris supporters to a reception room marked with signs that read: OK Preston, Sign Me Up." *Globe and Mail*, 19 April 1997, p. A4.
53. *The Globe and Mail*, 5 April 1997, p. A4.
54. *The Toronto Star*, 27 April 1997, p. A1.
55. *London Free Press*, 12 July 1997, p. A6.
56. Partial release of these documents was ordered by the Ontario Information and privacy Commissioner, following a request by *The Globe and Mail*. The commissioner ruled that only two of the ten documents requested should be released in their entirety, along with portions of seven others, but that the whole of a document "about relations between Ontario and its investors" could be withheld. *The Globe and Mail*, 28 May 1997, p. A4. At the time of writing, the documents ordered released had not yet been made available.
57. This phrase is Tom Courchene's, from the title of his forthcoming book.

From Jacques Parizeau to Lucien Bouchard: A New Vision? Yes, But ...

Réjean Pelletier

Devant l'impasse constitutionnelle qui perdure depuis l'échec de l'Accord de Charlottetown en 1992, on a exploré une autre voie de renouvellement de la fédération canadienne, soit celle d'ententes administratives conclues entre le fédéral et les provinces. Avec l'arrivée de Lucien Bouchard à la tête du Parti québécois et comme premier ministre du Québec, une nouvelle vision a semblé s'imposer dans les relations fédérales-provinciales. À la souveraineté intransigeante d'un Jacques Parizeau, on peut opposer la défense des intérêts du Québec d'un Lucien Bouchard qui propose certes la souveraineté-partenariat, mais qui est également prêt à conclure des ententes avec le fédéral lorsque le Québec peut en tirer profit (comme dans le cas de la formation de la main-d'oeuvre). Toutefois, cet esprit d'ouverture peut aussi se refermer en fonction d'un appui trop manifeste d'Ottawa et des autres provinces à la ligne dure à l'égard du Québec. Lucien Bouchard doit aussi composer à la fois avec les militants du PQ qui ne partagent pas tous cette nouvelle vision et avec la population québécoise qui n'endosse pas encore majoritairement le projet souverainiste.

INTRODUCTION

In recent years, Quebecers have been asked almost annually to give their opinions on the Canadian federation. In October 1992, they expressed their views through a referendum on the Charlottetown Accord, which they rejected with a no vote of 56.7 percent. A year later, they elected 54 Bloc Québécois (BQ) MPs (giving the party 49.3 percent of the vote), to defend the interests of Quebec and promote sovereignty in Ottawa. In September 1994, they chose the Parti Québécois (PQ) to form their provincial government with 77 MNAs (with 44.8 percent of the vote). In October 1995, Quebecers opted to remain in Canada by a narrow majority of 50.6 to 49.4 percent and a record voter

turnout of 93.5 percent. This result contrasts with the referendum of 1980, when 20 percentage points separated the two sides (voter turnout that year was 85.6 percent).

Most recently, in the federal election of June 1997, Quebecers sent a rather ambiguous message. Certainly the Bloc Québécois continues to hold a large majority of the Quebec seats, but caucus membership has declined from 54 in 1993 to 44 in 1997, and voter support has slipped from 49.3 to 38 percent. Meanwhile, the Liberal party of Jean Chrétien has made mild progress, but has not substantially increased its proportion of seats or votes. Rather, it was the Conservative party of Jean Charest which attracted a good number of voters from the Bloc in 1997. These were "soft" nationalists who were attracted by the theme of "national reconciliation" or were troubled by the Bloc's internal divisions and its performance in Ottawa, although the Conservatives failed to make a significant breakthrough in Quebec. Even though the Bloc continues to be prominent on the federal political scene in Quebec, the party is weaker than in 1993. This may foreshadow difficulties for the Parti Québécois in the next provincial election and in a future referendum, since the support for sovereignty, as measured by the vote obtained by the Bloc, is the lowest managed by a sovereigntist party for more than 20 years.

Following the failures to renew Canadian federalism in 1990 and 1992, and the unwillingness of the rest of Canada to amend the constitution so Quebec could assent to the *Constitution Act, 1982*, the country faced an impasse once again. These failures have led to strong reactions from Quebec, which sent a clear message to Canadian federalists: the support for the Bloc Québécois in two federal elections, the victory of the Parti Québécois provincially, and, above all, the near-victory in the referendum. These events suggest that the failure of constitutional reforms could cause the break-up of the country.

Facing this impasse, and finding themselves unable to amend the constitution, politicians have explored other ways of renewing the federation. If the constitutional route is closed, there remains room for administrative agreements. Since the 1993 election, this clearly has become the approach preferred by Jean Chrétien and the provincial premiers.¹ Even Lucien Bouchard has engaged — sometimes hesitantly — in this form of negotiation to achieve benefits for Quebec. In contrast, Jacques Parizeau did not use this option during his short time as premier.

Considering this negotiation of administrative agreements with the federal government, has the arrival of Lucien Bouchard as leader of the Parti Québécois brought a new approach to Quebec's relations with the federal government? Before answering the question by exploring the non-constitutional approach to federal-provincial relations, it is important to consider, as background, two important events which have influenced political life in Quebec and Canada in the 1990s, and to contrast the two sovereigntist leaders, Parizeau and Bouchard. In the final part of this chapter, we will outline some factors that

could influence the future of Quebec, and thereby affect the future of the Canadian federation.

BACKGROUND: TWO POLITICAL TURNING-POINTS

Considering the recent events of Quebec political life, we can note two major factors which changed the course of things. First, the defeat of the Meech Lake Accord in June 1990 was strongly resented in Quebec, strengthening the sovereignty movement and almost giving it a victory in the 1995 referendum. We do not need to look beyond this — especially the rejection of the Accord's recognition of Quebec as a "distinct society" — for reasons for the strength of sovereignist sentiment at the start of the 1990s. We must also remember that the progression of sovereignty-association since 1989 followed several events which generated strong reactions in Quebec. In December 1988, the Supreme Court declared that the requirement of unilingual French signs violated the Quebec and Canadian Charter of Rights. Then Quebec decided to use the notwithstanding clause to pass a new sign law, and, apparently in response various cities — mostly in Ontario — saw demonstrations against the French language and declared themselves English-only during the fall of 1989. As well, the premiers of Manitoba, Newfoundland, and New Brunswick threatened not to ratify the Meech Lake Accord unless significant amendments were forthcoming.² Analysts of this period submit that the progress of various sovereignist options was highly sensitive to contemporary events.³ We will return to this later in the chapter.

We must also consider the arrival of Parizeau as the leader of the PQ in 1988 and his replacement by Bouchard in 1996. Parizeau has always promoted a "*pur et dur*" ideal of independence, tirelessly repeating that it is essential to speak of independence "before, during, and after elections" — never hiding this goal for electoral reasons and always making it the ultimate objective of the sovereignist movement.

After support for sovereignty peaked at 58 percent in 1990 (support for sovereignty-association peaked at 70 percent in November of that year), nationalist fervour declined, with support for sovereignty stalling at around 40 percent in 1994 and early 1995.⁴ After he had postponed the referendum from spring to fall of 1995, Parizeau agreed in June to a compromise to try to increase support for the sovereignty cause: he signed an agreement with Bouchard and Action Démocratique leader, Mario Dumont, adding the idea of partnership to that of sovereignty. This is reminiscent of René Lévesque's idea of sovereignty-association, which had caused a great deal of tension within the sovereignist camp years earlier.

Despite the "instantaneous" rise in support for sovereignty in June 1995, the gains soon slipped away, and it seemed that sovereignists could not hope

for the yes vote to exceed 45 percent.⁵ An abrupt change occurred during the referendum campaign, when on 7 October 1995 Parizeau introduced Bouchard as the leader of Quebec's negotiation team in the event that the sovereignists won the referendum. Bouchard rapidly gained a high profile in the media, and at the same time he personified the partnership option. This option would mute the most harmful consequences of separation and softened the hard line position of Parizeau on independence. The more moderate Bouchard took over as the uncontested leader of the sovereignist forces, a leader who many francophone Quebecers could identify with.

What lessons for the future can we draw from these two turning points? The first of these was an unprecedented rise in support for the sovereignty option in the early 1990s, and its decline in the years that followed. One lesson emerges right away: Quebecers' sensitivity to the events of the moment causes support for sovereignty to fluctuate⁶ in accordance with the importance of these events for Quebec, its distinct character, and its French-speaking majority.

The second turning point relates to the role of Lucien Bouchard in the Quebec political scene, first as leader of the Bloc Québécois, then as leader of the PQ, and finally as premier of Quebec. Unlike Parizeau, who was firmly committed to the idea of independence, Bouchard embodied moderation and the notion of partnership as well as sovereignty, and he even reflected a certain ambivalence felt by a large number of francophone Quebecers. The cold, rational thinker was replaced by a more passionate and emotional leader. This shift dramatically changed the political landscape of Quebec and the province's relationship with the federal government.

TWO CONTRASTING VIEWS OF SOVEREIGNTY

For Jacques Parizeau, who became a sovereignist after a conference in Banff in 1967, there were certain lessons to draw from the 1980 referendum. These were to not take for granted a link between sovereignty and association, and to not ask for a mandate simply to negotiate such an agreement between Quebec and Canada. This explains why Parizeau made his convictions widely known after he became PQ leader in 1988 and especially during the second referendum campaign:

I abandoned these recurrent hesitations, the peculiar constitutional ideas and delaying tactics, and supported two simple formulae. Firstly, the Parti Québécois is sovereignist before, during, and after an election, and sovereignty is our *raison d'être*. Secondly, a referendum must be held to achieve a mandate for a sovereign Quebec; this referendum will be called soon after we form the government.⁷

Even after signing the tripartite agreement of 12 June 1995, Parizeau continued to say that the ultimate goal was sovereignty rather than partnership. This

is "a flexible formula to define the kind of economic relations that Quebecers want to maintain with Canada" until English Canada takes a clear position on the matter. Moreover, he asked whether there would be a third formula after association and partnership. It might be necessary, he concluded.⁸

In short, we may classify Jacques Parizeau as a "*pur et dur*" sovereignist, for whom the goal of sovereignty is always paramount, even without association or partnership. This highly uncompromising position contrasts with that of Lucien Bouchard, who is more wavering and doubtful. Parizeau aims at a single objective: sovereignty. While Bouchard shares the same goal, his faith is less steady. Yet he better reflects the ambivalence of the Quebec population.

Although he was once a Liberal, Lucien Bouchard joined the PQ in the early 1970s. A friend of Brian Mulroney, Bouchard wrote speeches for him and helped to prepare the Conservative Party program in the 1984 election.⁹ Named Canada's ambassador to France in 1985, he entered electoral politics as a Conservative candidate in a by-election in June 1988. Two years later, he resigned from Mulroney's Cabinet and from the Conservative caucus, to protest the amendments proposed to the Meech Lake Accord as part of an effort to persuade provincial legislatures to ratify it. He concluded his resignation letter with these words:

It is definitely better to have honour in disagreement than agreement in dishonour. Anyway, nothing would be worse than dishonour in disagreement, which I believe will be reserved for those who try, in vain I do believe, to convince Quebec to come to a conference to be trapped into final, humiliating concessions.¹⁰

After the resignation, the Bloc Québécois was born in Ottawa and Bouchard became involved in the sovereignty movement — the same Bouchard who had agreed to support the "*beau risque*" card announced by René Lévesque, a new orientation that led Parizeau at that time to leave the PQ as both minister and MNA.

The routes travelled by the two leaders are very different. Once he became a sovereignist, Parizeau never wavered in his ideology, always embodying the "*pur et dur*" face of sovereignty. On the other hand, Bouchard's nationalist convictions and his will to defend the interests of Quebec led him to found the Bloc Québécois, which obtained unexpected success in the 1993 election. Then he entered the 1995 referendum campaign, and would later become leader of the PQ and premier in January 1996. Although sovereignty is important for him, not everything is reduced to this single question. Above all, sovereignty must be achieved on terms that are acceptable for Quebec's entire population.

One of these conditions involves partnership. For Parizeau, the goal is sovereignty, with or without partnership; for Bouchard, partnership is more closely linked to the sovereignist project. Although he pledged in 1990 to "remain in politics to work for the sovereignty of Quebec,"¹¹ clearly he has not travelled

in a straight line. If there is one constant in his trajectory, it is his faithfulness to the aspirations and interests of Quebec. At present, this trajectory carries Bouchard toward a sovereigntist position, but this is a sovereignty based on a European model of partnership and the preservation of Canada's economic structure.¹²

With support from Mario Dumont, Bouchard virtually imposed this policy of partnership on Parizeau prior to the 1995 referendum. This agreement of 12 June, it is useful to note, has two important differences from previous projects of the PQ. First, the idea of a treaty on economic partnership adds a number of provisions to the kinds of agreements the PQ had previously indicated it would pursue, namely shared customs and currency and free circulation and mobility of labour. The new provisions deal with internal trade, international trade, Canadian representation in international affairs, transportation, defence policy, financial institutions, budgetary and fiscal policies, environmental protection, and postal services. More than a simple treaty of economic partnership, this proposal would reshape relations between Quebec and Canada in a confederal union covering numerous areas of activity.

This agreement also breaks new ground in its proposals for shared political institutions. To the three traditional bodies outlined in previous PQ documents — a council, a secretariat, and a tribunal — the agreement adds a parliamentary assembly. This would be comprised of Quebec and Canadian representatives nominated by their respective legislatures and would make recommendations to council and approve resolutions. This proposition takes the partnership concept closer to the European model that Bouchard had discussed previously. This is not to say that institutions based on a partnership of two members would necessarily be any more harmonious than one of six, twelve, or fifteen.¹³

A further subject remains to be explored: the identity of Quebec. For Parizeau, "anyone who wishes to be a Quebecer can be." Of course, Quebecers are of diverse backgrounds, but "neither race, nor colour define them, it is language." From this definition, Parizeau therefore recognizes that anglophone rights would be maintained in a sovereign Quebec, although he follows this by adding "Perhaps it would be preferable, in this case, to add nothing and bring ourselves closer in line with what English Canada wishes to do with regard to francophones outside Quebec."¹⁴ However, he stresses that a people who know who they are does not abandon the principle of equality of rights of all citizens, and that therefore a sovereign Quebec would respect its minorities.

While Bouchard shares Parizeau's views on the question of defining the identity of Quebecers primarily in terms of language, he has, however, disassociated himself from the idea of tying the rights of anglophones in Quebec to those of francophones outside the province. These rights are not to be bargained, says the present leader of the PQ, who follows René Lévesque in opposing a reduction of the rights of anglophones in Quebec. In a speech to

anglophone representatives in Montreal's Centaur Theatre on 11 March 1996, Bouchard firmly stated:

As a sovereigntist and as premier of Quebec, I believe that it is my duty to solemnly reaffirm our commitment to preserving the rights of the anglophone community at present, and in a sovereign Quebec. They shall continue to administer their schools, their colleges, and their universities; have access to courts and government in English; have access to social services and health care in their language; have radio and television in English.¹⁵

He added this forceful sentence: "When you go to the hospital and you are suffering, you may need a blood test, but certainly not language control."

In sum, Parizeau's uncompromising position on sovereignty contrasts with the consistent defence of Quebec's interests by Bouchard, who believes that these interests would be best defended, in practice, in a sovereign Quebec that will reach agreement on an economic and political partnership with Canada. Sovereignty is not a panacea to Bouchard; it must be achieved under the best possible conditions for Quebec. To him, it has become a necessity for Quebec in the wake of the failures of the "*beau risque*" idea and the Meech Lake and Charlottetown Accords. Such a position resonates not only with the nucleus of but also with more moderate, "softer" nationalists, for whom independence is not an absolute necessity, but rather an option that may become necessary if other alternatives fail.

Bouchard's record of more varied thinking, doubts, and ambivalence reflect the feelings of Quebecers, especially francophone Quebecers, better than the certainty and uncompromising nature of Parizeau. This is revealed in a series of polls in 1995-96 about voting intentions. Polls taken between June and October, while Parizeau led the party, showed the PQ's support averaging 46 percent. Polls between October 1995 and May 1996, with Bouchard's name as PQ leader, found party support averaging 54 percent. These results clearly demonstrate the attraction of the new PQ leader, with the PQ increasing its lead over the Liberal Party.¹⁶

A NEW VISION?

Meanwhile, two major tasks await the Bouchard government. First, it must clean up the province's public finances and completely eliminate its deficit by the year 2000, and do this while maintaining the social security net. In 1993, while he was leader of the Bloc, he spoke of a crisis in Canadian public finance: "the question is not about whether or not we will some day have to restore order to public expenditures. Rather, we must ask ourselves what is the most equitable way of doing so. And who will decide for Quebecers, the federal government or our government?"¹⁷

In keeping with this, fighting the deficit remains a priority — virtually an absolute necessity — for the Bouchard government, for two reasons. First, the government must end the uncontrolled increases in public expenditures and the resulting deficit. Second, an independent Quebec would be in a better position to assume responsibility for its share of the Canadian debt. This responsible financial management is not only necessary in the short term, but it will also make the government better equipped to face the economic upheavals which will inevitably follow secession. Overall, good financial management in the present will be seen as an indicator of future management practices by the inquisitive eyes of credit agencies.

The other major task of the Bouchard government is to defend the interests of Quebec within the Canadian federation (while awaiting sovereignty). In this light, Bouchard must look for agreements with the federal government that help Quebec to gain powers or alter conditions which are seen as being unacceptable. This provides a context in which we may analyze the agreement recently reached with the federal government to do with labour force training (or more exactly, a Canada-Quebec agreement relating to the labour market). Certainly there have been calls for such an agreement from all socio-economic sectors of Quebec. But Chrétien's Liberal government was not eager to conclude such an agreement only with Quebec, because of the risk that it would be interpreted elsewhere in Canada as a concession or a step toward special status for the province. By concluding an agreement with other provinces, this objection could be met. But the federal government was also anxious to reach an agreement before the 1997 federal election to show Quebecers that federalism could function effectively and flexibly.

From Quebec's perspective, such an agreement, first proposed by the government of Jean Lesage in the 1960s, had become an absolute necessity. Conditions appeared more favourable following the 1995 referendum, since the federal government felt it had to make efforts to accommodate Quebec. For Quebec, the situation had also changed following the departure of Parizeau and his replacement by Bouchard. The latter prefers negotiated solutions to endless confrontation, as is witnessed by the holding of socio-economic summits involving public and private sector leaders. Bouchard also prefers to avoid what he calls "the politics of the worst" by following a strategy of refusing to make any agreements in order to demonstrate that Canadian federalism can never work. According to him, such politics is always "the worst of politics."

The accord reached with Quebec conveys a recognition of asymmetrical federalism within the framework of an administrative agreement. The asymmetry lies in the fact that four provinces are content with a formula of co-management or participation in the federal program, while four of the other provinces (Alberta, Manitoba, New Brunswick, and Quebec) have obtained total jurisdiction in labour training. As well, the asymmetry is evident in the Quebec accord which distinguishes itself from those of other provinces on

one point (through an exchange of letters between the relevant ministers). In line with Bill 101, French is recognized as the official language in public administration; services are offered first in French, but on request they are then given in English throughout Quebec. This contrasts with the federal government's bilingualism policy requiring services in both official languages, but only where demand justifies it. The Quebec agreement also differed from others on another point which was, however, subsequently modified. Even though the accord is of indeterminate length, the level of financing was assured for specified time periods: five years in the case of Quebec, and three years in the case of other provinces. The other provinces' financing was later increased to five years to meet the level for Quebec (at the time of writing, this change was not yet official).

Concluded shortly after the federal election was called, this agreement generated little reaction as attention rapidly shifted to other events of the election campaign: job creation, deficit reduction, maintaining social programs, and Canadian unity (including discussion of "Plan B," which specified the conditions for the attainment of sovereignty). These issues quickly eclipsed the agreement on labour training, kept in step with a "Plan A" stressing negotiations with Quebec and the other provinces, and changes to the Canadian federation.

For the federal government, a priority was to prove that Canadian federalism was flexible and that reform of the federation was possible through administrative agreements. Meanwhile, the Quebec government was delighted by the gains achieved, but also underlined that Quebecers had been waiting 30 years for this reform. At the same time, it wanted to show that it was capable of negotiating a partnership with Canada in the future. Neither government really attained its short-term objective. On the other hand, at the political level, it may be useful to retain from this agreement the spirit of openness that was shown by both sides. Without giving up the possibility of "Plan B," the federal government can come to an understanding with the provinces about a transfer of powers. In the meantime, while continuing its quest for independence, Quebec may reach an accord with the federal government.

The spirit of openness and cooperativeness was also seen when Bouchard agreed to participate in Team Canada, led by the prime minister, to seek out economic markets in Asia. Certainly the premier of Quebec risked playing into the hands of defenders of federalism, a risk Parizeau had previously been unwilling to take. With the economy still weak, Bouchard preferred to take this chance if it offered the prospect of significant economic gains for Quebec. Again, we can say that, for him, defending the interests of Quebec is more important than just defending the idea of independence.

However, we cannot forget that Bouchard is also the leader of the Parti Québécois. Elected without opposition to lead the party after the resignation of Parizeau, Bouchard was not welcomed with the same enthusiasm by all

party members. Some of them viewed him, and continue to view him, suspiciously: he was an MP and minister for the Conservatives in Ottawa, they think that he is too soft and too conciliatory toward the federal government, he practically imposed the idea of partnership during the 1995 referendum, he broadened this idea of partnership in both economic and political respects, and he imposed budgetary restraint in health care, social services, and education — while the PQ has always defined itself as a social democratic party. In sum, the new leader, without deep roots in the party, fundamentally changed its orientation: the idea of sovereignty was now accompanied by a broader partnership, and the social democratic character was weakened by the fight against the deficit. Given these circumstances, we can better understand the serious warning the party activists gave to their leader at the party's 1996 convention: they gave him a vote of confidence of only 76.9 percent, which amounted to a call for him to exercise caution.¹⁸ We must not forget, then, that the PQ leader, also the premier of Quebec, operates with a narrow margin in which to manoeuvre — one that is more likely to shrink than expand.

Accordingly, the spirit of openness evident earlier can end quickly if the federal government decides to stress "Plan B," thereby forcing the Quebec government to avoid further negotiations, raise the ante, and make it more difficult to reach any agreement. In other words, if the federal government firmly adopts "Plan B," this can only lead to Quebec withdrawing from negotiations and a hardening of the positions of both sides.

It is within this context that we can analyze the failure of negotiations for a new family insurance system which Quebec had wanted to establish by January 1998. This is considered a key element of the Bouchard government's family policy. The system would allow access to personal income during maternal and parental leave, compensating for the limitations of the federal employment insurance program. To do so, the Quebec government asked the federal government to assume the additional costs and to consider the income as non-taxable. The two governments were unable to reach agreement on these two points and ended their negotiations, making it impossible to implement the program on schedule. In sum, Quebec wanted to create its own parental leave policy, by using the right to withdraw from the federal program as provided in federal law, and by doing so, considered that it had the right to fully recover its contributions to the federal program (not just the equivalent benefits withdrawn by parents in Quebec). At present, negotiations have stopped, but it is uncertain whether they have come to a complete halt, especially if both sides soften their positions somewhat.

The situation is different, however, where the Canadian social union is concerned. Since the premiers' meetings in Jasper in 1996 and in St. Andrews in 1997, the provincial governments have wished to become more involved in this area, and have arrived at a compromise between the richer and poorer provinces. Their agreement recognizes the formal presence of the federal

government in the social sphere and its capacity to define and establish "national standards" in areas of provincial jurisdiction, provided that the provinces participate. Bouchard has completely rejected this approach on the grounds that the constitution designates the social sphere as within provincial jurisdiction, and that the federal government's financial contributions in this area do not give it the right to impose national standards. This position had already been defended by other Quebec premiers, both Liberal and PQ. It was difficult for Bouchard to follow a different route because he had to consider the views of PQ activists. On this issue he had very little room to manoeuvre and did not dare to go outside it.

Overall, we can see that Bouchard has shown a spirit of openness toward the federal government in certain sectors, but the hardening of federal positions and the constraints imposed on him by party activists sometimes prevent him from maintaining this spirit. This is similarly evident when the premiers of the other provinces try to provide the Quebec Liberal Party with ammunition by recognizing "the unique character of Quebec society" and say they hope that the party will win the next election. How is it possible to work with other premiers who openly support your political opponent and hope you lose the next election?

WHAT OF THE FUTURE?

Quebecers, as we observed previously, are very sensitive to the way that events unfold: their support for sovereignty tends to rise during periods of crisis and fall during periods of calm. If this premise is correct, it is necessary to watch the political situation for the next two or three years, between now and the next provincial election and (if the PQ is reelected) the next referendum.

From Ottawa's perspective, two kinds of events could influence future support for sovereignty. First, the pursuit of "Plan B" amounts to a hard-line approach regarding Quebec and could generate strong reactions from its population, primarily among francophones. For instance, the next judgement of the Supreme Court on the legality of a unilateral declaration of independence could induce negative reactions in Quebec, arousing sovereignist fervour. Similarly, if Ottawa fails to recognize a majority yes vote in the next referendum, this would be perceived (and is already perceived) by many as an undemocratic act at the very moment when the sovereignist movement can pass the threshold of 50 percent of the vote. Nor should we forget that the partition movement arouses great hostility among Quebecers. Overall, then, past political-constitutional crises have had an impact on support for sovereignty, and these crises resulted from major events and untimely declarations by political leaders.

We must also take note of the presence of the Reform Party in the House of Commons, where it is now the official opposition, as well as its role outside Parliament. Its firm support for the principle of equality of all the provinces and its refusal to recognize Quebec as a distinct society should assist the sovereigntist movement. However, it is highly likely that recognition of distinct society status, if it ever occurs, will have little impact in Quebec — since it will take place too late, have its meaning weakened, and only be concluded after endless negotiations. The lack of recognition remains important since Quebecers perceive it as a rejection of their province's uniqueness by the other provinces. This rejection, then, has more impact than recognition would. It is important enough that the sovereignty movement will benefit if the Reform Party continues to reject the "distinct society" concept.

The following remarks, written by Jeffrey Simpson near the end of the last federal election campaign, summarize the situation well:

The Bloc and Reform feed off each other.... Quebec, under siege from a hostile, uncomprehending rest of Canada has for many years been a favourite depiction by secessionists. The arrival of Reform in Ottawa as official opposition will make that depiction even easier, given what Reform has said during the campaign about Quebec leaders.¹⁹

But sensitivity to the moment cannot explain everything: it is more useful for explaining short-term changes in mood than long-term trends. The latter certainly have more significance for Canadian unity than events of the moment, without denying their importance.

In this regard, two observations should be made. The first concerns the mobilization of Quebecers around events that might produce anger or indignation. We should note that it is becoming increasingly difficult to mobilize Quebecers against interventions or attacks by the federal government. A majority of Quebecers already believe that the federal government should have a say in a referendum question, and that more than 50 percent plus one of the votes are necessary to declare sovereignty. As well, it is growing more difficult to stir up indignation by simply recalling the patriation of the constitution in 1982 without Quebec's consent, or the defeat of the Meech Lake Accord in 1990. The memory of these events has faded with the passing of time (it has been 15 years since the patriation) and a weariness resulting from the many constitutional debates which resolved nothing.

But we should not assume that this weariness is a permanent and irreversible element of Quebec political life. If the federalist camp wants it to be, the sovereigntists can still mobilize the Quebec population following major events which are perceived as unfavourable to Quebec's interests. It is, therefore, less the references to past events than the impact of new ones that aids the sovereigntist movement. Similarly, the references to past events must be linked to personalities who are still playing a role in politics (e.g., connecting Jean

Chrétien to the repatriation of 1982 and the defeat of the Meech Lake Accord) if the sovereignists wish to have a real impact.

The second observation is more fundamental and deals with the support for sovereignty. The sovereignist movement begins with a base of about 35 percent of the electorate. To this, we can add 5 to 10 percent of voters who generally support the sovereignist option. Added to this fairly stable number, the support of others will often vary from poll to poll in response to political events. In this manner, 54.8 percent of Quebecers were favourable to sovereignty when it was accompanied by an offer of economic and political partnership with the rest of Canada, in the month following the 1995 referendum. Eighteen months later, in May 1997, no more than 42.9 percent expressed the same opinion.²⁰ However, between November 1995 and August 1996, an average of 52.4 percent of Quebecers supported sovereignty-partnership; on average only 46.4 percent took the same position between September 1996 and May 1997. More recently, a poll published on 30 August 1997 showed support for the sovereignist option at 45.4 percent. The president of Léger and Léger explains the decline by saying that some past supporters of sovereignty are now undecided and they are dissatisfied with the Bouchard government's cuts to expenditures and services.²¹

What conclusions can we draw from these numbers? Support for sovereignty, or more precisely, sovereignty-association (today referred to as sovereignty-partnership) usually lies between 40 and 50 percent. It is only after important events such as the defeat of the Meech Lake Accord in 1990 or the near-victory in the 1995 referendum that support passes the 50 percent mark. It stays at this level for a short time, and then declines. Therefore, it is difficult to mobilize consistently a majority of Quebecers in support of the sovereignty-partnership option. In these circumstances, Quebec may not find it easy to attain sovereignty and negotiate the kind of economic and political partnership that it might like, even after a majority vote for sovereignty. Such a majority would seem too volatile and unstable to provide a solid basis for sovereignty. In my opinion, the percentage of support (what level of majority?) is less important than the solidity and stability of this support; the latter will be the key factor in a referendum, because the principle of majority rule includes the risk of it turning quickly against supporters of sovereignty when they become a minority.

In pursuing the sovereignist cause, Bouchard must therefore take into account some factors that point in different directions: that Quebecers are sensitive to political events, yet it is nonetheless difficult to mobilize Quebecers against past federal actions; and that support for sovereignty-partnership sometimes exceeds the 50 percent mark, but is frequently below that level.

Overall, we may conclude that Jacques Parizeau and Lucien Bouchard embody two very different faces of sovereignty. The former represents the uncompromising, even dogmatic, vision of sovereignty; the latter appears more

conciliatory, more open to agreements and more concerned with reaching an economic and political partnership with the rest of Canada. These two visions both enjoy support among Quebecers. But if Bouchard represents the softer vision of the sovereigntist option, he must take into account different realities, some of them unavoidable — such as the facts that not all the PQ's members share his vision and that the Quebec population does not give majority support to the sovereigntist option (most of the time). Bouchard must therefore constantly navigate between the two constraining realities that push him in different directions: to harden his position to strengthen his leadership within the party; or to show a spirit of openness and to negotiate agreements with the federal government to build support for his cause among the population as a whole. Has the change from Parizeau to Bouchard brought a new vision of sovereignty? Yes, but...

This "but" indicates that there are heavy constraints on the Bouchard government. With this in mind, how can we evaluate the non-constitutional approach to modifying Canadian federalism? First, we must stress that the actions of the Quebec government vary from issue to issue. The government cannot accept the current terms of the Canadian social union, as this would imply official recognition of federal intervention in matters of provincial jurisdiction. However, it can negotiate agreements on labour training and even eventually a family insurance program since the province's jurisdiction in these matters is officially recognized. If Quebec is likely to benefit from such ventures, the Bouchard government is willing to pursue them.

However, Bouchard's government cannot always do this. When the federal government takes a hard line toward Quebec, or when provincial premiers openly wish for his electoral defeat, it becomes more difficult for the government to open negotiations with anybody. In this case, Bouchard probably will adopt a harder line, at least until the next provincial election. While Lucien Bouchard undeniably embodies a new vision of sovereignty which contrasts with Jacques Parizeau's, he cannot cede mastery of the political game to others, especially if this causes his own defeat.

NOTES

1. This applies at least until the Calgary declaration of 14 September 1997, when the nine provincial premiers from the rest of Canada, along with the two territorial leaders, agreed on a new "Canada Clause," in which they recognized the "unique character of Quebec society" as well as recognizing equality of citizens, equality of the provinces, Aboriginal Peoples, bilingualism, and the country's multicultural character. This declaration is subject to consultations in each province according to rules that vary from one province to another.

2. See Edouard Cloutier, Jean H. Guay and Daniel Latouche, *Le virage. L'évolution de l'opinion publique au Québec depuis 1960 ou comment le Québec est devenu souverainiste* (Montreal: Quebec/Amerique, 1992), pp. 62-66.
3. *Ibid.*, p. 67.
4. The factual material presented here draws on the work of Denis Monière and Jean H. Guay, *La bataille du Québec. Troisième épisode: 30 jours qui ébranlèrent le Canada* (Montreal: Fides, 1996), pp. 181-202.
5. Adopting a "realistic" method (rather than a proportional one) to estimate the views of the "discreet" or non-respondents, the average support for the yes side in 15 polls published between 23 August and 12 October 1995 was 45 percent. (Support for the yes side saw a slight increase at the end of September.) From the moment when the "Bouchard effect" became evident, support for sovereignty-partnership increased to 48.2 percent based on an average of the eight following polls. (The last two polls saw the yes side at 49.5 percent and 49.8 percent.) This method of estimating the distribution of support of "discreet respondents" (those who refuse to respond) was developed by Pierre Drouilly. It allocates three-quarters of this group to the no side and one-quarter to the yes side. See Pierre Drouilly, "Le référendum du 30 octobre 1995: une analyse des résultats," in *L'année politique au Québec 1995-1996*, ed. Robert Boily (Montreal: Fides, 1997), pp. 119-43.
6. It should be noted that the sovereigntist camp (like the federalist camp) is able to count on a base of support of about 35 percent of the electorate.
7. Jacques Parizeau, *Pour un Québec souverain* (Montreal: VLB éditeur, 1997), p. 38.
8. *Ibid.*, p. 348.
9. Lucien Bouchard, *À visage découvert* (Montreal: Boréal, 1992), pp. 137-57.
10. *Ibid.*, p. 325.
11. *Ibid.*, p. 334.
12. Under the direction of Lucien Bouchard, *Un niveau parti pour l'étape décisive* (Montreal: Fides, 1993), pp. 87-95.
13. For a more detailed analysis of these institutions in a new Canadian framework, see Réjean Pelletier, "Les arrangements institutionnels d'un nouveau partenariat" (especially the section entitled "Un partenariat d'égal à égal") to appear in Roger Gibbins and Guy Laforest (eds.), *Pour sortir de l'impasse* (Montreal: Institut de recherche en politiques publiques, 1998).
14. Parizeau, *Pour un Québec souverain*, p. 350.
15. Lucien Bouchard, "Vivre ensemble, avant, pendant et après le référendum," notes for a speech by Premier Bouchard to the anglophone community of Quebec, Montreal, 11 March 1996, pp. 6-7.
16. The factual material presented here draws on Édouard Cloutier and Yann Strutynski, "L'opinion publique québécoise," in *L'année politique au Québec 1995-1996*, ed. Boily, pp. 108-11.

17. Under the direction of Bouchard, *Un nouveau parti pour l'étape décisive*, p. 48.
18. According to the PQ's statutes, at the first convention after a general election, there will be a vote of confidence in the leader, whether or not he or she is newly-elected.
19. Jeffrey Simpson, "Postelection scenarios, none of them encouraging," *The Globe and Mail*, 28 May 1997, p. A28.
20. These results of these polls on sovereignty-partnership were published at different times by *Le Journal de Québec*. They have been published with the permission of *Le Journal de Québec*- Groupe Léger and Léger.
21. The poll was published in *The Globe and Mail*, 30 August 1997, p. 1.

Searching for Plan A: National Unity and the Chrétien Government's New Federalism

Robert Howse

Malgré les plaintes disant que le gouvernement de Chrétien manque d'une vision positive du futur de la fédération, le gouvernement fédéral a en fait pris un nombre d'initiatives pour renouveler et renforcer le fédéralisme. Celles-ci comprennent la négociation réussite d'une Entente d'échange interne avec les provinces, d'importants premiers pas vers la restructuration de l'union sociale, la création d'une agence d'inspection alimentaire nationale, et la négociation d'un arrangement rationnel pour livraison des programmes au sujet du marché du travail avec les provinces. Quoique ces efforts puissent sembler dérisoires quand jugées à l'encontre des attentes créées par les politiques mégaconstitutionnelles, ils sont un moyen de renforcer l'union canadienne en tant que communauté associative, formées de citoyens individuels dont les sentiments d'appartenance à la communauté sont basés sur des valeurs et des principes partagés, sur des buts et des objectifs partagés, et sur des intérêts partagés et réciproques, ces derniers reflétés dans les rapports économiques et sociaux parmi des individus à travers le pays. Cette idée de communauté associative est conforme à une allégeance parallèle à des communautés d'identités constituées par un langage commun ou autres liens sous politiques parmi les gens. Cela dépend aussi, cependant, sur un lien direct entre l'individu et la communauté associative canadienne, lequel est sans intermédiaire de la part de ces autres communautés d'identités. La déclaration de Calgary apporte le risque que les efforts apportés pour renforcer la communauté associative canadienne, seront encore une fois mélangés dans des politiques d'identités — ceci est une tentation qui devrait être évitée autant que possible. Plutôt, le défi principal est de mieux engager les individus et les organisations non gouvernementales dans des initiatives pour renforcer la communauté associative canadienne.

INTRODUCTION

Whatever the views of the proverbial "ordinary Canadian,"¹ media pundits, opposition politicians and constitutional experts have been relentless in pestering the federal government to develop a plan to "save Canada" — Plan A,

as it has now come to be known. Despite the grandiose failure of what Peter Russell has described as "mega-constitutional politics"² in the Canada round, there is no shortage of new proposals being generated that purport to restructure fundamentally the Canadian federation in the cause of unity. These include André Burelle's European Union-inspired scheme of co-determination in *Le Mal canadien*; Tom Courchene's ACCESS; and Gordon Gibson's original Plan A. Further "solutions" to the purported unity crisis are being worked on by a group of individuals oddly named the Group of 22, and by the Business Council on National Issues.

The grand and comprehensive aspiration of most of these schemes indicates that the authors have learned little or nothing from the Charlottetown debacle — once acquired, a taste for mega-constitutional politics seems hard to shake off. Yet despite the high risks, mega-constitutional politics often sets the implicit (and sometimes explicit) standard against which more modest, more subtle, incremental changes to the working of the federation are judged and found wanting.

Against this tendency, there is much to be said for judging the Chrétien government's record on federalism on its own terms, that is, not as a timid and unsatisfactory attempt at some kind of comprehensive national unity project, but rather as based on *an alternative vision* to that of mega-constitutional politics. This entails viewing the evolution of the Canadian federation as advanced best not by "throwing the dice" and the manufacture or exploitation of crisis, but through step-by-step evolution of federal practice to reflect changing realities and evolving conceptions of justice. This vision is underpinned by an understanding of the institutional sophistication and complexity of the Canadian constitutional order, which adapts and changes through multiple channels and processes, including the political practice of federal-provincial relations, formalized intergovernmental agreements and the judicial interpretation of the constitution.³ Even the major innovation of the *Charter of Rights and Freedoms* in 1982 can be seen as the culmination of an increasing rights orientation in Canadian political culture, expressed in provincial human rights codes, and a series of constitutional decisions that inferred the protection of civil liberties from the general character of the Canadian constitution and the Canadian form of government. Similarly multiculturalism and its constitutional entrenchment were less a product of some ideal model of Canadian society, but a response to the reality of its changing shape. Likewise the amendment to the constitution in 1982 giving provinces increased control over their natural resources emerged from a context of difficult political bargaining and interaction between the provinces and the federal government, not from an academic's or bureaucrat's conception of an ideal, rational division of powers.

On the basis of this more institutionally subtle and complex vision of how the federation evolves, the Chrétien government can claim some important achievements, although these will doubtless seem paltry to those still trapped

in the mindset of mega-constitutional politics. The government has successfully pursued and achieved a major agreement with the provinces on the removal of barriers to internal trade; it has restructured its policy role in labour market training, developing agreements with the provinces that get the federal government out of the service delivery end while vindicating the national interest through performance-based, negotiated national standards; the government has begun to reimagine the Canadian social union, working with the provinces under the umbrella of the Ministerial Council for Social Policy Renewal and already achieving concrete results in the area of child poverty.⁴ A new national institution, the Canadian Food Inspection Agency, has been created, consolidating and rationalizing important functions within the federal government while providing a new institutional framework for interjurisdictional cooperation.

If this were not enough, the government has — in the Speech from the Throne and the second *Red Book* of the Liberal Party — given itself the task, during the second mandate, of further enhancing mobility within the Canadian economic and social union, and pledged on 26 February 1996 to “work with the provinces and the private sector” to achieve “a much more open agreement” on internal trade.

If the federal government has not neglected the task of strengthening the Canadian community, it has been labouring at some disadvantage because its vision of the Canadian community has remained largely unarticulated. Perhaps as a reaction to unrealistic and grandiose schemes, the government has consciously decided to portray its activity as muddling through or making the federation work better.

In this chapter, I propose a vision of Canadian community that makes sense for the twenty-first century; a vision nevertheless rooted in the major transformations in the Canadian polity that have occurred in the last 25 years, from the introduction of bilingualism to the holding of a national constitutional referendum; and a vision that vindicates the general intuitions behind the significant but incremental changes to federalism that the government has sought to achieve over the last five years. Because this is not a partisan effort, it will also entail criticisms of federal practice, although not from the perspective of mega-constitutional politics.

CANADA: WHAT KIND OF COMMUNITY?

The search for Canadian community has often, if not usually, been defined in terms of finding a Canadian identity. This is hardly surprising since, in important ways, the entire agenda of nation-building has been a response or a reaction to those who do seem to know who they are — Americans on the one hand, and francophone Quebecers on the other. English Canadians have sought a nation that would look like, and compete with, what others understood by a national community — one based on a Canadian *identity*.

At least as a response to Quebec nationalism, this has been a self-defeating process, because, rooted in language and culture, french Quebec as a community of *identity* appears obviously more authentic and compelling than Canada, where the markers of identity — a few symbols and few distinctive public policies — seem much weaker and more tenuous. If Canada, in the strong sense, were to be a democratic community of identity it would need to be a community reflecting the language, culture, and so on, of the majority — therefore, crudely speaking, English-Canadian. And this is precisely why many Quebecers, including many who care for Canada, have seen attempts to strengthen Canadian nationalism as a threat to the existence of Quebec as a community of identity. How can one have allegiance to Quebec as a community of identity, and also be a *Canadian* nationalist, when nation is defined in cultural or linguistic terms?

The predominant answer to this dilemma has been to conceive Canada, not as a nation at all, but a “community of communities,” as “two nations” or — perhaps including the Aboriginal Peoples — several nations. Canada is not itself a community of identity but a kind of shell or umbrella for many identities. This was most clearly manifested in the so-called “Canada Clause” of the Charlottetown Accord, which recognized all manner of collective identities, as if one added up the sum of these and arrived at Canada.

Yet these notions of “community of communities” or “two (or more) nations” are merely vapid formulas, at least in defining what makes Canada itself a *community*. They are based on the outlook that, if we somehow could solve all provincial and regional, or other group grievances, then national unity would magically appear on the horizon.⁵ But a community cannot be defined, much less justified, in such negative terms. One sometimes hears of couples who go into marriage therapy, making heroic efforts to solve all their grievances and complaints, but then discover — after working out the most delicate and complex *modus vivendi* — that they no longer love one another, that there no longer exists a community of interest and feeling.

How then to begin thinking about Canada as a community of interest and feeling that is, nevertheless, compatible with allegiance by its members to other communities of identity, yet more than the aggregate of these other communities? In fact, there are ways of belonging to a political community that do not implicate a shared *identity* that has been forged through some pre- or sub-political bond between the majority of individuals that constitute the community. Because of the obsession with identity politics, these other conceptions of belonging or allegiance have been underexplored in Canadian political and constitutional discourse.

One of these ways of belonging is expressed in the idea of constitutional patriotism, developed by the German philosopher Jürgen Habermas.⁶ This denotes an idea of citizenship and allegiance based upon shared values and principles, typically embodied in a liberal democratic constitution. A further

kind of belonging, also not based on identity, is denoted by association for shared ends. This entails not simply the sharing of abstract values and principles but active association for the realization of specific projects or goals — saving the environment or eliminating child poverty, for example.⁷ In addition, a sense of belonging can evolve and crystallize through what Joseph Weiler calls “long term peaceful relations with thickening economic and social intercourse”⁸ — interaction and intermingling of individuals, with shared or complementary economic, social or cultural interests. When Canadians trade across the country, move for reasons of work or study, maintain friendships that cross provincial, regional, and linguistic boundaries, they affirm the reality of this form of belonging to a Canadian community. All three of these ways of belonging are associative rather than identity-based — they are premised on the will of *individuals* to live together and interact, whether based on shared values, or shared goals, or shared, or complementary interests. Thus, Canada as an associative community is not a compound of other communities or collectivities, but a community of individual citizens, who may have parallel allegiances to communities of identity, but whose association as *Canadians* need not be mediated through those other identity-based communities.⁹

Political theorists have often viewed these non-identity-based forms of belonging as somehow weak or inadequate as a basis for national unity. Thus, Will Kymlicka suggests that shared values are not sufficient to produce “social unity,” but a shared identity is required as well.¹⁰ Yet these claims are rarely documented properly. In some contexts, even shared values or ideology have been enough to create the kind of social unity that causes people of different nationalities to fight in wars and risk their lives — North Americans did not fight in the second world war on the basis of a shared national identity, but in significant measure for the cause of freedom and democracy. Still, it may well be true that shared identity is often the *easiest* way to produce strong forms of allegiance to the community, unconstrained or unqualified by whether the community serves values, goals, or interests that can be rationally articulated and debated. Associative communities, by contrast, rarely sustain the “my country, right or wrong! variety of patriotism” — the community continually has to justify the allegiance of its members in exemplifying or serving the values, ends, and interests that are shared or overlapping, and this is always a matter of democratic argument and debate, in which at the limit the community itself and its reason for being are *en jeu*. But is social unity of the unconditional kind really an appropriate foundation for a liberal democratic federation? Perhaps it is a *desirable* feature of associative communities, that they are unlikely to be plagued by the forms of extremism characteristic of unreflective and unconditional attachment to a community of identity.

The attempt to address national unity through megaconstitutional politics has invariably led to an emphasis on the recognition of group identity — different groups struggle to have communities of identity constitutionally

recognized and protected. The Canadian nationalist counter-reaction is to argue for Canada itself as a community of identity — thereby increasing the threat to other communities of identity within Canada. But facilitating associative forms of belonging to the Canadian community need pose no such threat, provided this is done carefully. To be sure, *any* meaningful direct allegiance to an associative community that transcends particular identities is a threat to extreme forms of nationalism or collectivism that seek to *absolutize* a single community of identity as the central, predominating locus of human allegiance. But, once we understand properly the distinction between identity-based and associative community, the question, for example, as to whether Quebecers are Canadians or Quebecers first need never again be asked — one's primary attachment to Quebec as a community of identity need not conflict with an attachment to Canada as an associative community. There may, of course, be disagreements between these two communities on specific policies, for communities of identity do overlap with communities of association — both may have a legitimate stake in areas like social and economic policy, and may have a different perspective on these matters. But these conflicts are not conflicts of *allegiance* as such.

Managing the co-existence of an associative Canadian community with communities of identity is perhaps the most fundamental challenge of liberal democratic governance in Canada. Pierre Trudeau had a tendency to formulate this in terms of a competition of allegiances, implying that a fully emancipated member of the Canadian community of association would no longer need or would be jettisoning a community of identity — like growing up and leaving home.¹¹ Yet communities of identity provide a permanent and vital support for the projects we have as autonomous agents, and for the ends that we may wish to pursue as members of communities of association: they constitute a significant part of what Robert Putnam calls "social capital."¹² This is a point that Will Kymlicka has elaborated in arguing for the importance of cultural context in the free self-development of the individual.¹³

At the same time, communities of identity (if they are genuinely liberal and democratic, and do not practise ethnic cleansing) usually have minorities within them who do not share the identity on which the community is based in quite the same way as the majority — perhaps because the identity of the minority has been acquired rather than being predetermined in the way that identities are often thought to be, or because they belong *as well* to some other community of identity. Moreover, communities of identity must deal with the reality that their members are likely to have multiple or plural identities — whether through marriage, and family background, or because characteristics such as gender or religion cross-cut with those elements of identity upon which the *community* of identity is based (e.g., majority language). If, then, communities of identity are to manage properly the inevitable challenge of pluralism,

they must draw on some of the strengths that are likely to be exhibited by the associative community, particularly the use of universal frameworks of rights and norms as a basis for cooperation among people who are different.

In sum, the relationship between communities of identity and associative community — between different kinds of belonging — is not intrinsically one of competition, but rather of balance between the distinctive strengths and weaknesses of two different kinds of human affiliation or attachment. This balance would be lost, if one were to attempt Canadian unity by turning Canada itself into a community of identity *or* if one were to conceive the Canadian community merely as a compound of different communities of identity, each of which mediates the relationship between its own members and the Canadian union as a whole.¹⁴

THE CONSTITUTION AS A FRAMEWORK FOR ASSOCIATIVE COMMUNITY

It is quite remarkable to what extent the original and evolving architecture of the Canadian constitution can be understood as a framework for a community of association, where living together is based on shared values, common goals, and thickening or evolving economic and social intercourse between citizens. The federal powers over trade and commerce, over areas that relate to the common infrastructure required for economic and social intercourse such as interprovincial transportation, aviation, telecommunications, and broadcasting, as well as the provisions on federal works and undertakings are all relevant to this understanding. They give to the federal government, which is democratically responsible for the entire community, the responsibility for ensuring the means for economic and social intercourse among its members. Other provisions, such as the prohibition of internal tariff barriers in section 121, and the mobility rights¹⁵ and equalization¹⁶ provisions of the *Constitution Act, 1982* reflect the fact that not only the protection of free intercourse through negative rights to move and to trade, but governance mechanisms as well, are needed to facilitate thickening economic and social intercourse among Canadians.¹⁷

The broader relationship between the original and evolving architecture of the constitution and the idea of Canada as a community of association has been grasped in a variety of Supreme Court judgements: for example, in *S.M.T. (Eastern) Ltd. v. Winner*, Rand J. suggested that "To be a citizen of Canada must be a dynamic reality that extends beyond the realm of political and legal institutions to the vital aspects of one's material existence ... [The] freest possible access to the national market should be inherent to Canadian citizenship and therefore secured in the Constitution."¹⁸ More recently, LaForest J., in the cases of *Morguard* and *Hunt* has articulated the relationship between economic union and the idea of Canadian citizenship.¹⁹

In policy and constitutional debates over the last decade or so, the connection between economic union and the idea of Canada as a community of association has nevertheless frequently been obscured. In various ways, the economic union "agenda" has become identified with a *laissez-faire* outlook, or a conservative economic platform more generally. In the Canada round of constitutional negotiations, the idea of a social union was introduced in the first instance to counter this *laissez-faire* version of the economic union, as if it were premised upon a different and opposed ideological outlook.²⁰ Thus, what might have been an opportunity for broadening the concept of economic union into a fuller notion of the requirements of a community of association was largely lost. However, as was acknowledged at least as early as the Rowell-Sirois Commission, portability and comparability of social benefits could facilitate movement of people across Canada — when people do not move because they lose the degree and kind of social support provided by the community that they are exiting, we have an impediment to labour mobility in Canada, one of the most important dimensions of the Canadian community of association.²¹

More controversially, the viability of an associative community can be argued to depend, not only on economic and social mobility, but also upon the realization of a conception of distributive justice among its members — this may include the conception of a minimum level of social welfare as a right of citizenship²² and also a notion about sharing the benefits and burdens of the association equitably. Both dimensions can be found in section 36 of the *Constitution Act, 1982*, which commits the federal and provincial governments to providing reasonable levels of public services, wherever citizens may live in the country, and also gives the federal government a role and responsibility in equalization.²³ There is, I believe, a special case for norms about social equality in an associative community. In communities of identity, people almost naturally see their likeness to other members, since membership is defined by some pre-political common characteristic, language, ethnicity, culture, regional customs and history, etc. Hence, such communities can afford unusual degrees of social and civic inequality, without necessarily risking the sense of community itself — in fact, communities of identity have often been caste societies. But communities of association depend on a *civic* bond between their members, and this bond is both practically, as well as theoretically, difficult to sustain in the absence of equality of opportunity and meaningful rights to participate in the social and economic intercourse of the community. This does not necessarily translate into a convincing case for welfare rights, but it does suggest at a minimum that one cannot be indifferent to the emergence of vast discrepancies in the social protection enjoyed by citizens in different localities, if one wishes to sustain the idea of common citizenship that underlies the associative community.

THE FEDERAL ROLE

Democratically elected by the Canadian people as a whole, it would be inconceivable if the federal government did not have a major role in evolving the institutions, norms, and policies needed to sustain and develop Canada as an associative community. As already suggested, many of the federal government's explicit competences go to facilitating economic and social intercourse among citizens. But, as the only public authority democratically responsible to the members of the association itself, the federal government's responsibility in sustaining and facilitating the community naturally exceeds the normal pursuit of discrete public policy goals within well-circumscribed competences. The government cannot be indifferent to the impact of policy outcomes of other orders of government on the sustainability of the associative community. At a formal juridical and constitutional level, this can be accounted for through the elasticity of federal general powers of Peace, Order and Good Government and Trade and Commerce, especially as recently interpreted by the Supreme Court.²⁴ But given the precarious constitutional status of these powers prior to the recent jurisprudence, the federal government tended to rely very extensively on the spending power to sustain its overall role in facilitating the community of association.

The use of the spending power provided necessary leverage to achieve certain results. But in various ways it also weakened or failed to strengthen the community of association. By paying substantial parts of the bill, the federal government was able to impose conditions on other governments that helped sustain the associative community, but the ease of doing so obviated a more subtle policy dialogue, or the need to state explicitly, and to win agreement on the shared values and principles, and the shared goals or ends, informing the union. Moreover, there were problems in realizing the associative community that could hardly be solved through spending, such as various regulatory barriers to internal trade, and these remained inadequately addressed.

As well, the federal role in sustaining the associative community was entangled with a command and control view of what governments do, despite the fact that here in essence its function is facilitative of intercourse among citizens, and is one that cannot by its nature be performed without engaging the confidence and resources of other actors. Thus, in securing the social union through national standards in the Canada Assistance Plan, in fact, the federal government sought to prescribe modes of delivery, or forms of programming, as if operating within an exclusively federal jurisdiction; this was even more the case with labour market training, where the government actually involved itself in creating and managing the detail of programs within individual communities.²⁵ Labour mobility concerns, and the relationships between macroeconomic policy, trade, labour markets, and adjustment gave the federal

Government a legitimate policy *stake* — provincially driven approaches might not satisfactorily reflect the need to retrain workers for jobs *elsewhere* in Canada, and might pose new barriers to mobility, through residency requirements, etc.²⁶ But the manner of federal intervention reflected an inadequate appreciation of the extent to which the quality of the outcomes must depend on the engagement and support of other actors — whether provincial governments, with their responsibility for labour markets and education, or trade unions and community associations, critical sources of social capital.

THE CHRÉTIEN STYLE OF FEDERALISM

The Chrétien government has been cautious and bold at the same time in defining its role in sustaining Canada as an associative community of association. On the one hand, it has retreated from unilateralist or hierarchical approaches to sustaining the Canadian community of association; on the other hand, it has been much more insistent than previous governments have often been on the evolution of explicit principles and norms as a framework for association and it has defended vigorously the value of mobility, which is crucial to thickening economic and social intercourse among citizens.

THE ECONOMIC UNION

The federal government, through relentless moral pressure on the provinces (but not the heavy-handed use of carrots and sticks) encouraged the conclusion of a comprehensive statement of principles and norms for economic mobility within Canada, the Agreement on Internal Trade (the AIT). Harsh criticisms have been levelled at the agreement from the perspective of free trade — it contains many exceptions or loopholes, it is not legally-binding and often represents an agreement to engage in further negotiations, many of which have made little progress.²⁷ In fact, there is much to be said for the positive appreciation of the agreement by, for instance, Bruce Doern, who sees it as an unprecedented attempt at providing a general normative framework to structure the interaction of governments with a view to a particular set of pan-Canadian objectives.²⁸

However, the agreement has largely failed at engaging citizens — the members of the Canadian associative community — in those processes. This is a view also articulated by Knox in his contribution to this volume. The loose institutional frameworks envisaged by the agreement are largely intergovernmental in character. Its language, largely borrowed from international trade arrangements, is inscrutable to the non-expert citizen. Indeed, it does not reflect the economic union as a characteristic of Canadian citizenship but rather merely as a free trade arrangement. Access to dispute settlement for individual

citizens has been curbed through a screening process.²⁹ It is significant that one area where progress is being made in realizing the AIT blueprint is labour mobility, where a degree of dynamism has been achieved through the engagement of non-governmental actors such as unions and regulatory and licensing bodies for trades and professions. As well, the entitlements under this chapter of the AIT have been effectively publicized, and the dispute settlement process internal to this chapter stands out in its capacity to allow individual citizens the opportunity to challenge barriers to mobility.

The federal government could do much more to engage citizens in the AIT exercise, without changing the text of the agreement. For example, in cooperation with various business and labour associations, and other stakeholders, it could seek to disseminate much more information about the provisions of the agreement, explaining these in terms of a citizen's charter of economic mobility rights, and their relationship to the overall architecture of Canada as a community of association. The secretariat itself could be transformed into a much more proactive organization,³⁰ with a mandate for dialogue and interaction with the public — obviously, this would require the support of the provinces and territories.³¹

THE SOCIAL UNION

The dismantling of the Canada Assistance Plan (CAP) was widely interpreted as the first stage in federal withdrawal from an active policy role in social assistance. However, it is becoming evident that this was really the first stage in a much more careful but also more explicit redefinition of the federal stake in social policy outcomes in terms of social mobility, and perhaps also distributional equity (with a reconceptualization of equalization), as well as a rethinking of the means appropriate to vindicating such a policy stake.

It is significant that the one CAP condition that remained was a prohibition on residency requirements, reflecting the core value of mobility, and equally significant that, when British Columbia flouted this prohibition, the federal government held its ground, achieving a negotiated settlement that actually entailed placing mobility on the intergovernmental social policy agenda.³² The mobility principle was thus recognized to entail some kind of broader set of principles and norms that address divergent levels of social protection, and costs and benefits to provincial societies of inward and outward migration from other parts of Canada.³³

It is easy to misinterpret³⁴ the fact that the federal government has placed less emphasis on explicit carrots and sticks in playing its role as ultimate democratic guarantor of the community of association — allowing, for instance, the provincial Ministerial Council to take the initiative, in the first instance, in developing proposals on principles and norms to govern the

evolution of the Canadian social union. This does not constitute federal withdrawal. All the actors are aware of the federal government's continuing financial role in sustaining the social union; that if it wishes, it can choose the path of disentanglement, substituting a unilateral policy role through the tax system; and that the government gains legitimacy and credibility from being elected by the Canadian people as a whole.³⁵ When federal officials communicate the federal policy stake in sustaining the social union, it can reasonably be presumed that the provinces do not simply hang up the phone on them. What the Chrétien government has rightly rejected is a *macho* style of federal-provincial relations that brought discredit to the federal role, however legitimate in principle.³⁶ In sum, one can walk softly, while still carrying a big stick.

Finally, the federal government has discovered resources other than large grants of money with which to pursue its legitimate policy stake in the social union. For example, the government has a unique database, from federal tax information to mobility across Canada — probably essential to the settlement of disputes concerning the burdens and benefits of interprovincial migration. This last insight goes, of course, beyond the social union context, and will be discussed below in connection with the Canadian Food Inspection Agency initiative.

LABOUR MARKET TRAINING

The restructuring of the federal role in labour market training has almost always been presented, at least in the media, as an example of decentralization. This is ironic, because in its agreements with the provinces, the federal government has moved closer to a structure for accountability for results than it had ever achieved when it was acting as a direct purchaser of training.³⁷ The agreements foresee the development of a national methodology by the *federal* government to establish national results levels for the programs, determined in accordance with criteria that include return to employment of Employment Insurance clients. The process of evaluation of results is to be overseen by a joint federal-provincial evaluation committee.³⁸ Future federal funding is to be adjusted on the basis of the results.

By establishing a national methodology, the federal government will in fact be able to create a kind of competition between provinces — which are the more, and the which less, successful in achieving results with the programs will be evident, and those more successful can obviously be rewarded with greater funding in the future. Moreover, from the perspective of the associative community, it is important to note that the agreements prohibit residency requirements as a condition of access training benefits. This facilitates interprovincial labour mobility, by allowing an individual to move into any province in Canada where he or she believes that a training program is available that will meet specific needs, or where it is possible to obtain a job, once trained

or retrained. Moreover, because the performance of the programs is defined in terms of criteria that do not refer to the *provincial* labour market, but reemployment generally, the provinces do have an incentive to provide training, even where the trainee may find reemployment elsewhere in Canada — no such incentive would exist in the case of purely provincial programs defined in terms of intraprovincial criteria for success. In sum, to the extent that the federal role in sustaining the Canadian associative community is implicated in labour market training, the federal government has been able to better define, and will probably be better able to vindicate this role in the future, through its agreements with the provinces. At the same time, in removing itself from direct provision and detailed program design, the federal government will be better able to exploit the social capital of other communities, some of which may be communities of identity, in the development of integrated networks for training, education, retraining, and job search.

THE CANADIAN FOOD INSPECTION AGENCY

Food inspection is an area where executive federalism was particularly unsuccessful in generating effective cooperation and concerted action by the various levels of government.³⁹ I believe the initiatives of the federal government in this area display particularly well some of the characteristics of the Chrétien approach to federalism already mentioned, but especially the tendency to more carefully and precisely conceptualize the federal government's own policy stake and role *at the same time as more effectively engaging other responsible actors, including the provinces*. Thus, in the case of food inspection, the federal government proceeded simultaneously on two fronts: reorganizing and refocussing its own often diffuse involvement in the area through the consolidation of the direct federal role in a new agency, while at the same time undertaking a variety of federal-provincial initiatives, in close consultation with industry and consumer interests, one success of which is the National Dairy Code. The government never lost sight of, and indeed more clearly conceived, its own policy stake as the government representative of all Canadians, with responsibilities for international and internal commerce in agricultural products (the latter engaging the associative community); it brought to the intergovernmental table its own expertise and vision of the future of food inspection, given globalization and developments in best regulatory practice. In sum, the federal government, while not attempting to *impose* its vision, never lost sight of its distinctive role and competencies, and its responsibility as government of *all* Canadians; it did not recede into the position of just another government in a co-determination process. And indeed, the government — rightly in my view — resisted the temptation to turn the Canadian Food Inspection Agency into a formal co-determination mechanism with the

provinces. The agency remains a federal entity, but also provides a forum for more effective links and joint initiatives with the provinces and indeed other stakeholders in the overall food inspection system, but this has not been solidified into formal joint-decisionmaking.

CONCLUSION

The Chrétien government has evolved a new way of doing federalism in Canada, shifting the focus away from the politics of identity toward the support and development of the Canadian associative community. It has combined a more carefully and explicitly defined articulation of the federal government's role as a national government, with the gradual evolution of a set of subtle instruments more capable of engaging other actors, whether provinces, the private sector, or other communities, while also responding to the limits of traditional command and control styles of federal intervention. The government has wisely steered clear of attempting to use federal powers to assert a strong Canadian nationalism that would somehow "compete" with Quebec nationalism. Instead, it has focused on a strengthening of the associative community of Canadians through the evolution of the Canadian economic and social union — which does not threaten or compete with communities of identity, but as the labour market training example shows, can actually exploit their social capital in the achievement of pan-Canadian goals.

As the example of the economic union most clearly illustrates, however, where the government has to some extent failed has been in the engagement of citizens directly in the the new federalism. The idea of associative community is, of course, in its essence the idea of a community of citizens, not governments.⁴⁰ The government should define more clearly the new federalism in terms of a context of engagement with a wider range of actors than just provinces. This need not involve the development of new and grandiose structures — the stimulation of public debate, the education of citizens about the constitutional foundations of the associative community, the provision of information about rights and entitlements provided through intergovernmental agreements, whether the AIT or the labour market training accords, all serve to engage citizens directly in the new federalism, without the need to devise novel decisionmaking structures at odds with established understandings about the lines of governmental accountability. This is all part of developing an ethos of *citizenship* appropriate to an associative community, as an alternative to the construction of a Canadian *identity*. Indeed, in the development of this ethos a greater self-consciousness of the extent to which Canada does function as an associative community is important, and the federal government should consider providing a regular report on free movement in Canada, using its unparalleled statistical resources to document, in an accessible fashion,

the multiple links and contacts, economic, social, educational, and so on, that bind us as an associative community, a community of *citizens*. At the same time, inasmuch as new formal structures *are* being created, for instance for dispute settlement in the case of principles or norms governing the social union, direct access for citizens is vital to the concept of Canada as a community of association.⁴¹

Finally, the federal government must continue to retain its own distinctive policy stake in the Canadian associative community; it is not merely a facilitator of interprovincial cooperation to sustain that community, but the *democratic* authority that is uniquely responsible for that community in itself. Part of the answer to the democratic deficit that has plagued the European Union as well as executive federalism in Canada, an answer that the Europeans do not unfortunately have easily available to them, is that in Canada there is one government that is at the intergovernmental table with a claim to represent the *entire* community. Contrary to the suggestion of André Burelle,⁴² the traditional European co-decision model cannot be easily analogized to Canadian federalism, because that model supposes that each deciding partner represents some particular community constituting part of a whole, while no partner is present representing the European *demos* itself. Despite its initial promise, strengthening the European Parliament has not succeeded in correcting the democratic deficit of European executive federalism, simply because the Parliament does not have its own executive, ultimately responsible to the European *demos*, which can directly participate in the co-decision process among representatives of national governments.

A closely related point is that the federal government, just as it should avoid locking into a rigid co-decision framework for conducting intergovernmental relations, should also avoid the elevation, if that is the right word, of intergovernmental negotiations on the social union or further economic union negotiations, into a kind of pseudo-constitutional process where the attempt is to recast, through non-constitutional means, the division of powers. As the labour market accords illustrate, the federal government has flexible means at its disposal to restructure its involvement in areas where rebalancing is appropriate given policy substance. On the other hand, pseudo-constitutionalism, as for instance, entailed in the full-blown version of the Courchene *ACCESS* proposal is likely to once again re-engage the politics of identity, making national unity if anything more elusive.⁴³ It is possible to seek agreement on the norms and principles governing the social union, without any political statement about the extent or limits on federal or provincial *powers* — the existing powers are simply re-affirmed (as in the AIT) remain the same, but the focus is on articulating the *lignes directrices* for some foundational elements in the Canadian associative community, which inform the interaction of governments and their relationship to citizens.

The federal government has also supported recognition of the distinctiveness of Quebec, one community of identity within the Canadian federation, and in so doing it has not avoided altogether the dangers of entangling identity politics with the challenge of strengthening the Canadian associative community. However, such recognition does not in itself entail a conflict with the idea of Canada as an associative community — as long as it is not undertaken in a manner that suggests that the associative community itself is constituted by two (or more) nations as communities of identity, rather than by citizens of all identities. The call for consultations on national unity in the declaration that emerged at the September 1997 Premiers' Meeting in Calgary based on a framework consisting of general principles will require a carefully crafted federal response. The principles in their ambiguity and uncertain interrelationship reflect the land mines of identity politics — thus all provinces have “equal status” while Quebec has a “unique character” and Canada’s “gift of diversity” includes “a multicultural citizenry drawn from all parts of the world.” This is an invitation to become mired once again in the intractable task of sorting out how abstract constitutional recognition of very different kinds of identities and communities of identity can be consistent with equality of citizens. The thrust of this chapter suggests that the federal government should instead place the emphasis on concrete measures to better manage the co-existence of communities of identity with the Canadian associative community. The Labour Market Agreement with Quebec is precisely an example of such a concrete measure, reflecting the distinct needs of the province in this area, without trying to make a general statement about the place of Quebec in Canada, or how, for example, that place differs from or is similar to the place of various aboriginal communities. Similarly, the complex, and often difficult process of negotiating self-government arrangements with individual aboriginal communities, however frustrating and unjustifiably slow, has shown considerably more promise than the effort to define a constitutional “right” to aboriginal self-government, and the relation of this right to federal and provincial powers and to the *Charter of Rights and Freedoms*. In sum, far from ignoring the important challenge of allowing communities of identity their appropriate place within Canada, the federal government should continue to respond to this challenge in ways that avoid the politics of group *recognition*, which is how constitutional identity politics have been cast from Meech Lake on. The idea of Quebec’s distinctiveness or unique character should be viewed, then, as a principle among others to inform concrete policy-making where the federal government and Quebec government have shared or overlapping interests, and not as a substitute for the symbolism of constitutional recognition.⁴⁴

In its future initiatives to sustain and evolve the Canadian community of association, the federal government will rightly not be returning to command and control methods of unilateralism. It will be acting increasingly with and through other stakeholders — which means taking account of their views and

interests in the shaping and reshaping of policy. But there are times when it will be more appropriate to engage directly with citizens or the private sector rather than with other governments; times when the appropriate approach is bilateral arrangements with individual governments, which could become trilateral if other organizations become involved (for example, in alternative service delivery); and at yet other times a full-blown multilateral intergovernmental process. By avoiding a global approach to the definition of powers and decision-rules the federal government maintains this kind of flexibility, and preserves the full range of possibilities inherent in its unique role and responsibility as the government of Canadians as a whole — of a sovereign *demos* or people.

NOTES

1. A recent *Globe/Environics* poll found that a majority of the population was generally supportive of the Chrétien government on the issue of unity, 56 percent nationwide with 45 percent in Quebec (reflecting close to the entire federalist population of the province). *The Globe and Mail*, 4 August 1997, p. A1.
2. See Peter Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* (Toronto: University of Toronto Press, 1995), ch. 11.
3. See the suggestion by Katherine Swinton that Canada's constitutional order "is continuously being restructured through various mechanisms such as intergovernmental agreements, tax and spending policies and judicial decisions." Katherine Swinton, "Concluding Panel," in *Seeking a New Canadian Partnership*, ed. F.L. Seidle (Montreal: Institute for Public Policy, 1994), p. 203.
4. See Kenneth Battle, *Transformation: Canadian Social Policy, 1985-2001* (Ottawa: Caledon Institute of Social Policy, 1997), pp. 31-32.
5. This is the perspective behind Kenneth McRoberts' diatribe against Pierre Trudeau; Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity* (Oxford: Oxford University Press, 1997); see my review of this book and McRoberts' response, *Policy Options*, October 1997, pp. 44-48.
6. Jürgen Habermas, "Citizenship and National Identity: Some Reflections on the Future of Europe" *Praxis International* 12, 1 (1992).
7. See, for instance, Aristotle, *Politics*, Book I (Oxford: Clarendon Press, 1916).
8. Joseph H.H. Weiler, "The State 'über alles'," Harvard Jean Monnet Working Paper 6/95 (Cambridge, MA: Harvard Law School). The basic argument of my chapter owes much to this paper, and to a related conversation with Professor Weiler.
9. This conception is developed in the discussion of Canadians as a democratic people in R. Howse and A. Malkin, "Canadians are a Sovereign People: How the Supreme Court Should Approach the Reference on Quebec Secession," *Canadian Bar Review* 76 (1997): 197-200.

10. Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).
11. Indeed, there is a cosmopolitan position that goes further than Trudeau and questions whether any positive moral value attaches at all to association based on shared identity, as opposed to a shared universal humanity. See the essay by Martha Nussbaum, in *For Love of Country* (Boston: Beacon, 1996). This is the position erroneously attributed to Trudeau by McRoberts, *Misconceiving Canada*, for instance.
12. Robert Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993).
13. Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon, 1995).
14. As Charles Taylor, for instance, proposes in "Shared and Divergent Values," in *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism* (Montreal: McGill-Queen's University Press, 1993), pp. 182-84. Taylor's notion of Canadian identity, for Quebecers for instance, "passing through" or being mediated by their primary community of identity should be contrasted with Weiler's conception of a "civic, value-driven demos *co-existing side by side* with a national organic-cultural one," Weiler, "The State 'über alles'," p. 46.
15. *Charter of Rights and Freedoms*, section 6
16. *Constitution Act, 1982*, section 36.
17. This draws on work in progress of the author and Stevan Pepa, "Trade, Mobility and the Future of the Economic Union," University of Toronto, Faculty of Law, 1997.
18. [1951] S.C.R. 887.
19. *Morguard Investments Ltd. v. DeSavoye* [1990] 3 S.C.R. 1077 and *Hunt v. T & N plc*.
20. The argument that social and economic union are intrinsically linked is developed in Robert Howse, *Economic Union, Social Justice, and Constitutional Reform: Towards a High and Level Playing Field* (Toronto: Centre for Public Law and Public Policy, York University, 1992); see particularly the critique there of the economic efficiency perspective on the union at 12-15.
21. See Keith Banting, *The Welfare State and Canadian Federalism* (Montreal: McGill-Queen's University Press, 1982).
22. See M. Jackman, "The Protection of Welfare Rights Under the Charter," *University of Ottawa Law Review* 20 (1988): 305.
23. See Robin Boadway, "Federal-Provincial Relations in the Wake of Deficit Reduction" in *Canada: The State of the Federation 1989*, ed. R. Watts and D. Brown (Kingston: Institute of Intergovernmental Relations, Queen's University, 1989). See also Robert Howse, "Another Rights Revolution? The Charter and the Reform of Social Policy in Canada" in *Redefining Social Security*, ed. P. Grady, R. Howse and J. Maxwell, (Kingston: School of Policy Studies, Queen's University, 1995) and "Find New Ways to Secure our Social Union," *Policy Options*, June (1996).

24. *R v. Crown Zellerbach Canada Ltd.* [1988] 1 S.C.R. 401; *General Motors of Canada v. City National Leasing* [1989] 1 S.C.R. 641. For a detailed analysis of these decisions and their impact on Canadian federalism, see Robert Howse, "Subsidiarity in All But Name: Evolving Principles of Federalism in Canadian Constitutional Law" in *Contemporary Law Droit contemporain: Canadian Reports to the 1994 International Congress of Comparative Law, Athens*, ed. H.P. Glenn (Cowansville, Qué.: Yvon Blais, 1995), pp. 712-21.
25. For an elaboration of this point, see Howse "Find New Ways to Secure our Social Union."
26. See R. Howse, *Economic Union, Social Justice and Constitutional Reform*, pp. 107-08.
27. See, for example, the comments of Armand de Mestral in *Getting There: An Assessment of the Agreement on Internal Trade*, ed. M.J. Trebilcock and D. Schwanen (Toronto: C.D. Howe Institute, 1995), pp. 95-98.
28. Bruce Doern, "Rules about Rules," paper presented at conference on "Globalization and the Canadian Regulatory State," Carleton University, May 1997.
29. This last criticism is developed in detail in Robert Howse, "Between Anarchy and the Rule of Law: Dispute Settlement and Related Implementation Issues in the Agreement on Internal Trade," in *Getting There*, ed. Trebilcock and Schwanen.
30. On the possibilities for strengthening the secretariat, see Daniel Schwanen, *Drawing on Our Inner Strength: Canada's Economic Citizenship in an Era of Evolving Federalism*, Commentary no. 82 (Toronto: C.D. Howe Institute, 1996).
31. These kinds of proposals are to be found in Robert Howse, *Securing the Canadian Economic Union: Legal and Constitutional Options for the Federal Government*, Commentary, no. 81 (Toronto: C.D. Howe Institute, 1996).
32. Human Resources Development Canada, "Prime Minister and Premier Clark Settle BC Residency Dispute: "The Prime Minister and the Premier agreed that a national multilateral process, with all parties consulted on its design, would advance everyone's interest in protecting and promoting mobility in Canada. The Government of Canada will raise the issue with all the provinces and work toward a national solution in two years," press release, 6 March 1997.
33. The emphasis the government has placed on mobility in a number of contexts is quite consistent with its (implicit) vision of Canada as a community of association. The freedom, and practical capacity, of each citizen to associate with others throughout Canada is precisely what permits Canada to be a community of association. Thus, in the Speech from the Throne the government clearly stated that "the Government will continue to protect and promote unhampered social mobility between provinces and access to social and other benefits, and will work with the provinces to identify new and mutually agreed approaches." Speech from the Throne to Open the Second Session Thirty Fifth Parliament of Canada, February 27, 1996. The Speech from the Throne contains a parallel commitment to "work with the provinces and the private sector to achieve a much more open agreement."

34. Thus, for example, Roger Gibbins has chosen to characterize the policy moves in question almost exclusively in terms of decentralization and a shift to inter-governmental decisionmaking. See Roger Gibbins, *Time Out: Assessing Incremental Strategies for Enhancing the Canadian Political Union*, Commentary no. 88 (Toronto: C.D. Howe Institute, 1997).
35. The negotiation of the Canada Child Tax Benefit represents an excellent illustration of this; the federal government is both fully committed to working *with* the provinces, but also vigorously insistent that its own policy stake, as the government of all Canadians, be recognized; the government will want to ensure, for example, adequate commitments that an enhanced federal benefit will lead to provincial reinvestment in programs that effectively deal with the needs of low-income families with children, that is, that the moral hazard problem is addressed. See Battle, "Transformation: Canadian Social Policy, 1985-2001," p. 33.
36. Perhaps the clearest example were the dealings between certain western provinces and the Trudeau government around the National Energy Program.
37. On the accountability and performance problems of federal training programs see generally Robert Howse and Marsha Chandler, "Industrial Policy in Canada and the United States," in *Degrees of Freedom*, ed. K. Banting, G. Hoberg and R. Simeon (Montreal: McGill-Queen's University Press, 1997), and the studies cited therein.
38. *Canada-Alberta Agreement on Labour Market Development*, sections 7-8. I have used this agreement as the example for purposes of this chapter.
39. The following draws on Robert Howse, "Reforming the Canadian Food Inspection System: An Opportunity to Build a New National System," in *Alternative Service Delivery: Sharing Governance in Canada*, ed. R. Ford and D. Zussman (Toronto: Institute of Public Administration of Canada and KPMG Centre for Government, 1997), pp. 138-50.
40. See Howse and Malkin, "Canadians are a Sovereign People."
41. The Courchene ACCESS proposal, despite the use of ombudsmen within provincial communities, would duplicate the shortcoming of the AIT in this respect, through screening of citizen or other private actor (e.g., corporation) complaints both with respect to the social and economic union. This would hardly be mitigated by the fact that under Courchene's system *government* complaints as well would have to pass through screening. See Thomas Courchene, "ACCESS: A Convention on the Canadian Economic and Social Systems" in *Assessing ACCESS: Towards a New Social Union*, ed. D. Cameron (Kingston: Institute of Intergovernmental Relations, Queen's University, 1997), pp. 106-07.
42. André Burelle, *Le mal canadien: essai de diagnostic et esquisse d'une thérapie* (Montreal: Fides, 1995).
43. In this sense, André Burelle's reaction to ACCESS is instructive; once powers and formal decisionmaking capacities get on the table, the temptation to raise the old canards of identity politics becomes irresistible. André Burelle, "Canada Needs a Political and Cultural as well as a Social and Economic Covenant," in *Assessing ACCESS*, ed. Cameron.

44. Thus the intergovernmental affairs minister, Stéphane Dion, while an academic, cast the distinct society notion in terms of responding to genuine distinct needs posed by the position of Quebec as a linguistic community of identity, not in terms of abstract recognition of a "people" or nation. This distinguishes Dion from those like Charles Taylor and Guy Laforest who have conceived the issue in terms of group recognition. See Stéphane Dion, "Explaining Quebec Nationalism," in *The Collapse of Canada?* ed. R.K. Weaver (Washington, DC: Brookings Institution, 1992).



IV

Chronology

Chronology of Events July 1996 – June 1997

Melissa Kluger

An index of these events begins on page 363

5 July 1996
Health Policy

After a meeting with his Alberta counterpart, Health Minister Halvar Jonson, the federal health minister, David Dingwall, says Ottawa will not give Alberta the \$3.6 million it was penalized during a dispute over health fees. Last October, Ottawa began withholding \$422,000 per month in transfer payments to Alberta for allowing private clinics to charge fees to patients.

8 July 1996
Aboriginal Peoples

Justice George Adams rules that a native band in Sarnia can pursue a class action suit against corporations and individuals in order to settle a land-claims dispute. The Chippewas have claimed ownership to an area known as the Cameron Lands.

9 July 1996
National Unity

Prime Minister Jean Chrétien announces the establishment of The Canada Information Office. Heritage Minister Sheila Copps will utilize a \$20-million budget to inform Canadians about federalism — promoting the Canadian identity and national unity. Copps says the office will enable Canadians to learn more about one another through such activities as cross-country exchanges.

9 July 1996
Agriculture

Agriculture Minister Ralph Goodale says he wants to end the debate about the future of the Canadian Wheat Board.

A federal panel proposes that the Wheat Board, which has a monopoly over Prairie grain sales, should continue to market all grains except feed barley, which should be placed on the open market. Farmers on both sides of the debate are unhappy with the panel's recommendations. Supporters of the board say the proposed changes will put farmers at risk for increased prices, while those in favour of privatization say the suggestions are not drastic enough. Goodale says he will consult with western Canada's farmers before going ahead with any of the recommendations.

10 July 1996
Aboriginal Peoples

At the annual meeting of the Assembly of First Nations, Indian Affairs Minister Ron Irwin announces that Ottawa will be providing \$98.5 million to improve water and sewage treatment on Indian reserve lands. Despite these extra funds, Chief Ovide Mercredi criticizes the Liberals for failing to carry out their election promises which included a new housing program and increased land-claims settlements.

19 July 1996
Aboriginal Peoples

The Labrador Inuit Association agrees to talks with Ottawa and the Newfoundland government, which will speed-up a 19-year-old land claim involving more than 5,000 Inuit in northern Labrador.

22 July 1996
Emergency Aid

Flood victims in eastern Quebec who lost homes, businesses, and loved ones, are assisted by the province's establishment of a \$200-million fund and Ottawa's contribution of about \$150 million. In early July, 12,000 people were evacuated from their homes in the Saguenay-Lac St. Jean, North Shore, and Charlevoix regions in order to escape flash floods in the area. Quebec Premier Lucien Bouchard praises Ottawa for its quick response to the emergency.

22 July 1996
Agriculture

Alberta launches a legal challenge in the Federal Court of Canada against the monopoly held by the Canadian Wheat Board over the sale of wheat and barley. The challenge is one of many responses to Agriculture Minister Ralph Goodale's call for opinions regarding the role of the export agency and the possibility of putting some type of barley on the open market. In contrast to Alberta's legal challenge, Saskatchewan Agriculture Minister Eric

Upshall announces that he wants to fight to preserve the Wheat Board as an institution that continues to serve Canadians.

22 July 1996
Fisheries

Federal Fisheries Minister Fred Mifflin approves a deal struck by the bilateral Pacific Salmon Commission, allowing natives from Washington State to catch about 50,000 fish bound for British Columbia. BC Premier Glen Clark attacks the deal and says his province will attempt to block it. The deal comes only a week after Ottawa had agreed to discuss the possibility of giving the provinces more say in the fisheries.

24 July 1996
Education

A bill aimed at reforming Newfoundland's church-run education system passes unanimously in the provincial legislature. The bill's provisions include reducing the provinces 27 religious school boards to ten, centralizing control over construction of new schools, and establishing a French-language school board. Some of the more controversial issues, such as parental choice of schools and transportation arrangements, will not be resolved until after public consultations in the fall, assuming the constitutional amendment is passed.

25 July 1996
Aboriginal Peoples

Indian Affairs Minister Ron Irwin announces that federal spending for native communities will be increased by \$140 million over the next five years. The funds will be directed toward a new housing program to improve living conditions on reserve lands.

26 July 1996
Sovereignty

BC Intergovernmental Relations Minister Andrew Pettey says an internal federal government memo, regarding the growth of separatism in British Columbia, is an encouraging sign that his province is being heard in Ottawa. The memo shows a growing feeling that the federal government is insensitive to BC's concerns and an increasing separatist sentiment based on economic growth and geographic isolation. The memo cites an Angus Reid poll taken in 1995 which reported that 12 percent of British Columbians support separatism.

31 July 1996
Environment

The Ontario government releases a discussion paper proposing to cut the number of provincial environmental

regulations almost in half. Federal Environmental Minister Sergio Marchi says he is concerned that deregulation will threaten national environmental standards. Marchi is also sceptical of the Ontario government's claim that streamlining the system will not be harmful to the environment.

6 August 1996
Premiers

Catherine Callbeck announces her resignation as premier. Callbeck's Liberal government had won all but one seat in the 1993 election and she was planning to call another election. A public opinion poll showed that her party's popularity was waning. While Callbeck says she has achieved the goals that her government had set, it was time to make way for a successor who "better reflects the current wishes of the people."

7 August 1996
Emergency Aid

Quebec Premier Lucien Bouchard announces that Quebec will give \$100 million to rebuild homes, businesses, and farms that were destroyed or damaged in July by flooding in the Saguenay region. Ottawa announces a contribution of \$300 million.

12 August 1996
Environment

Federal Environment Minister Sergio Marchi says he wants to work with the provincial government to find a "community-based" solution for cleaning up toxic tar ponds in Sydney, Nova Scotia. Decades of steel-making has resulted in 700,000 tonnes of sludge and has created one of Canada's worst environmental catastrophes.

19 August 1996
Health

Federal Health Minister David Dingwall tells delegates at the Canadian Medical Association's annual meeting that Ottawa will not accept a dual health-care system since it privileges Canadians based on their ability to pay. The delegates pass a resolution which calls for public discussion on new ways to fund health care, but do not endorse a two-tiered system.

22 August 1996
*Premiers - Annual
Conference*

Health care is a central issue as premiers call for a restructuring of national standards and joint management of social policy at their conference in Jasper, Alberta. With the exception of Quebec Premier Lucien Bouchard, the premiers agree to establish a council to rewrite the rules

controlling social programs. The premiers disagree about whether provinces who violate the standards should be fined. Alberta Premier Ralph Klein, whose province was docked \$3.6 million for failing to comply with the new standards, argued against the penalty while other premiers favoured the rule as a means to maintain quality health care across the country. Aside from social policy, the premiers decided to develop a three-year plan for rebalancing federal and provincial powers, to press Ottawa for \$2-billion national infrastructure program, to lobby Ottawa for a fairer tax system, and to support Canada's efforts dealing with foreign overfishing.

22 August 1996
Disputes

Quebec Premier Lucien Bouchard and Nova Scotia Premier John Savage agree to let federal regulators decide the route of a natural gas pipeline running from Sable Island gas field of Nova Scotia to New England. Bouchard says it would be more economical to run the line through Quebec, while Savage sees this as an attempt to divert Nova Scotia's royalties. Savage warns that Canada should not endanger the pipeline by putting it in a part of the country that could become independent.

27 August 1996
Language

As his government is about to begin a hearing into Bill 40 to bring back the Commission de protection de la langue française, Premier Lucien Bouchard calls for understanding on the topic of Quebec's language laws.

The language debate was rekindled by English-rights activist Howard Galganov who announced his plan to air his complaints about language laws to business leaders in New York next month.

8 September 1996
Sovereignty

Quebec Premier Lucien Bouchard says another referendum will not be held until after the next election in order to focus on the economy and jobs.

10 September 1996
Health

Health ministers say a new national agency will be established within a year to control Canada's blood system. While the new agency is supposed to be national, Quebec Health Minister Jean Rochon says his province is looking to establish its own system.

- 11 September 1996
Aboriginal Peoples Indian Affairs Minister Ron Irwin is accused by Chief Ovide Mercredi of trying to impose his opinion on what is good for Canada's natives. Irwin has proposed changes to the *Indian Act* which Mercredi feels may result in the loss of reserve land.
- 12 September 1996
Lieutenant-Governor Former Senator Jean-Louis Roux is sworn in as Quebec's new lieutenant-governor with little enthusiasm from Premier Lucien Bouchard. Prime Minister Jean Chrétien chose Roux without consulting the province.
- 18 September 1996
Constitution Saskatchewan Premier Roy Romanow, New Brunswick Premier Frank McKenna, and Newfoundland Premier Brian Tobin call for a new round of constitutional talks. Romanow wants Canada to recognize Quebec's historic demands and the distinctive nature of the province. Quebec Premier Lucien Bouchard says he is currently focusing on his province's economic problems, rather than constitutional issues.
- 24 September 1996
Energy Reform Leader Preston Manning suggests that Ottawa decrease its equalization payments to Quebec and give the money to Newfoundland as compensation for the Churchill Falls power deal which grants Hydro-Québec 90 percent of the Fall's 5,428 megawatts of power at pre-1970s prices. According to Newfoundland Premier Brian Tobin the deal translates into \$70-\$80 million annual earnings in Newfoundland and \$750 million in Quebec. Tobin wants Quebec to renegotiate the contract to direct a greater share of the profits to his province.
- 26 September 1996
Sovereignty Ottawa is seeking advice and clarification from the Supreme Court of Canada regarding the legalities of separation. Justice Minister Allan Rock wants to establish the ground rules prior to the next referendum by asking the court to answer the following questions:
- Can the Government of Quebec take the province out of Canada unilaterally?
 - Is there a right of self-determination under international law?
 - If there is a conflict between domestic and international law on the question, which one takes precedence in Canada?

- 26 September 1996
Senate
- Prime Minister Jean Chrétien appoints Nova Scotia lawyer and Liberal party organizer Wilfred Moore to the Senate to replace retired Allan MacEachen, bringing standings in the upper house to 51 Liberals, 50 Conservatives, and three independents.
- 26 September 1996
Gun Control
- Ontario, Manitoba, Saskatchewan, and the Yukon say they will intervene in a challenge filed by Alberta against Ottawa's decision to establish a national firearms registry. The five governments claim that federal Justice Minister Allan Rock's gun control legislation, which makes registration of firearms mandatory, is unconstitutional and will not reduce criminal activity.
- 27 September 1996
Aboriginal Peoples
- Despite threats of protest from native chiefs, Indian Affairs Minister Ron Irwin says Ottawa will go ahead with legislation to amend the *Indian Act*. Native leaders voted 24 September to reject the amendments and to create their own committee to discuss the Act.
- 1 October 1996
Education
- The Council of Ministers of Education announces a new set of national tests to assess the level of skill and knowledge of students across the country. The tests, to begin next year, will focus on mathematics, literacy, and science in order to measure trends in curriculum and teaching. Although education is a provincial responsibility, Ottawa has aided in the project by investing \$4.5 million over the last three years.
- 2 October 1996
Quebec
- Former Quebec Premier Robert Bourassa, 63, dies in Montreal. Bourassa, who brought his Liberal Party to power in 1969, became Quebec's youngest premier at the age of 36.
- 3 October 1996
Fisheries
- The proposal for a new *Fisheries Act* is tabled in the House of Commons by Fisheries Minister Fred Mifflin. Under the new Act, provinces would take more responsibility for the protection of fish habitats in their area, and fisheries ministers would be able to negotiate with the industry according to regional management needs rather than adhering to federal regulations.
- 3 October 1996
Welfare
- BC Supreme Court Justice John Spencer strikes down the provincial government's controversial 90-day residency

requirement for welfare recipients. The new rule, estimated to save approximately \$25 million a year, was announced November 1995 to compensate for a decrease in transfer payments to the province. Ottawa reacted by withholding \$46 million in transfer payments, saying that BC had violated the Canada Assistance Plan.

4 October 1996
*Canada Pension
Plan*

At a meeting of federal and provincial finance ministers, Ontario's Ernie Eves leads Quebec, BC, Manitoba, and Saskatchewan in a threat to upset Ottawa's plans for overhauling the Canada Pension Plan, including the proposed hike in employer and employee contributions, if the government fails to reduce Unemployment Insurance premiums. It is expected that the Employment Insurance fund will be \$5 billion in the black at the end of this year and twice that in two years. Business wants to see these earnings returned to the economy as an incentive for job creation.

10 October 1996
Premiers

Keith Milligan, minister of transportation and public works, is sworn in as Prince Edward Island's new premier.

10 October 1996
Fisheries

Following BC Fisheries Minister Corky Evans' call for aid, his federal counterpart, Fred Mifflin, announces that Ottawa will soon be able to help the BC coastal communities that have been devastated by the decline in salmon fishing. The report of the provincial Job Protection Commission says that 7,800 jobs were lost in fisheries, at a cost of \$245 million to the BC economy. To ease the economic situation, Ottawa is considering a proposal to hire unemployed workers to work at rehabilitating salmon streams that have been damaged by forestry and urbanization.

10 October 1996
Taxes

Finance Minister Paul Martin says that three Atlantic provinces can make books tax-exempt when the provincial sales tax is merged with the federal goods and services tax next April, but that Ottawa will not cover the cost. Without posing a threat to the GST harmonization plan, Nova Scotia, New Brunswick, and Newfoundland will be able to offer a partial refund to cover the provincial share of the proposed 15-percent blended levy.

10 October 1996
Education

The final report issued by Quebec's commission on the state of education says that the role of religion in school should be diminished, that full-time kindergarten should be provided, and that funding to private schools should be reduced. While Education Minister Pauline Marois could not commit to all of the recommendations, she did reiterate that the government hopes to replace the current religious school boards with boards based on language.

10 October 1996
Labour

The Quebec government announces its plan to pass legislation which will make it easier for Ontario workers to get construction jobs in Quebec. Currently over 4,000 Quebec residents work on construction sites in Ontario while only a few hundred Ontario residents work on sites in Quebec.

15 October 1996
Energy

Newfoundland Premier Brian Tobin releases a secret document which he says proves Quebec acknowledged it is reaping unfair profits from the Churchill Falls power contract which it signed with Newfoundland in 1969. The agreement has allowed Hydro-Québec to buy energy from the Labrador project and sell it at ten times the original price. Tobin argues that the contract can and should be renegotiated, while Hydro-Québec and the Quebec government have made it clear that they have no plans to reopen the deal.

16 October 1996
Constitution

A draft of a new constitutional proposal is tabled in the Northwest Territories legislature. The proposal was motivated by a fear that the North would become a fragmented political structure unless native and mainstream governments find a way to work together. The draft suggests that beginning in 1999, when the new territory of Nunavut is created, over one-third of seats in the western-Arctic legislature should be reserved for Aboriginals.

18 October 1996
*BC-Federal
Relations*

Relations between the British Columbia and federal governments were improved after a meeting in Vancouver between Premier Glen Clark and Prime Minister Jean Chrétien. The leaders agreed on a new national cost-shared infrastructure program, while agreeing to disagree on BC's residency requirement for new welfare recipients and on

proposals to revise the Canada Pension Plan. In addition, Ottawa offered BC a bigger role in the management of the fishery.

21 October 1996
*Industrial
Development*

Prime Minister Jean Chrétien announces an \$87-million interest-free loan to Bombardier Inc. The money is granted to the Montreal-based company for the development of a new 70-seat passenger jet which is expected to create and maintain 1,000 jobs. Reform MPs object to the government's decision to allocate one-quarter of its new Technology Partnerships Canada fund to the project, pointing out that Bombardier has received almost \$1.2 billion from Ottawa over the past 15 years.

28 October 1996
Aboriginal Peoples

The federal government is condemned by Alberta Premier Ralph Klein, Saskatchewan Premier Roy Romanow, and national aboriginal groups for its declining commitment to native social programs. Ottawa claims it is only responsible for covering welfare costs for reserve Indians and wants to shift the economic burden of some aboriginal social programs to the provinces. Grand Chief of the Assembly of First Nations, Ovide Mercredi, is concerned that if native issues are handed over to the provinces then natives would receive fewer services. Ottawa currently spends approximately \$700 million a year on welfare for reserve Indians.

29 October 1996
Aboriginal Peoples

A plan to relocate the remote community of Davis Inlet to the Labrador mainland is met with overwhelming support in a referendum. More than 97 percent of the ballots favoured the agreement between the Innu and Newfoundland and federal governments, in which the province will turn over land at Sango Bay to provide health and education services to the community afflicted with such problems as poor sanitation and housing. The transfer, estimated to cost Ottawa \$70 million, will provide the community with running water, sewers, and access to the mainland.

6 November 1996
Fisheries

Fisheries Minister Fred Mifflin responds to BC's call for help by announcing that Ottawa will spend "whatever it costs" to provide short-term job relief to thousands of

salmon fishery workers who have been displaced as a result of poor salmon runs and fleet reduction.

14 November 1996
Language

Louise Beaudoin, Quebec's minister responsible for the French Language Charter, announces new language policies for civil servants. The objective of the 30 new rules, which restrict the use of languages other than French by civil servants, is to send a message to immigrants that they must become part of the francophone majority. Services that were bilingual prior to the new policies will still be provided in either language but anglophones will now have to request English service.

14 November 1996
Lieutenant-Governor

A motion to abolish the position of lieutenant-governor is tabled by Premier Lucien Bouchard. Bouchard calls the post a colonial relic and says that if it cannot be abolished, Quebec should at least have the power to make its own appointments. The issue was sparked by Chrétien's appointment of Jean-Louis Roux, a federalist, as the Quebec's new lieutenant-governor. On 5 November, Roux admitted that he had worn a swastika and participated in anti-conscription protests when he was a student at university, giving sovereigntists an impetus to demand his resignation. While Chrétien assured Roux he did not have to step down, he resigned the next day, apologizing to Jews and veterans for his actions.

18 November 1996
Elections

The ten-year-old Liberal government is replaced by the Conservatives in PEI's election. The Tories take 18 of the Island's 27 seats, the Liberals hold onto only eight and, for the first time, a seat goes to an NDP representative. Conservative leader Pat Binns suggests that PEI's dissatisfaction with the Liberals comes as the result of its ties to the federal government and its unpopular policies.

20 November 1996
*Industrial
Development*

After taking criticism from the West about its \$87-million loan to Montreal-based Bombardier Inc., the federal government provides a \$30-million loan to British Columbia's Ballard Power Systems Inc. The money will go to the development of environmentally-friendly fuel cells to provide electric power to homes, hospitals, and industry.

- 20 November 1996
Environment
- Provincial and federal environment ministers agree in principle to unify Canada's environmental standards. Although the details are not yet worked out the accord would set common requirements for each province on issues such as air, water, and soil quality.
- 21 November 1996
Aboriginal Peoples
- The Canadian Royal Commission releases its report on Aboriginal Peoples. The report indicates that Canada risks violence unless it gives its natives a new deal, including new lands, resources, respect, and real self-government. Recommendations include an increase in government spending to improve housing, health, education, and employment opportunities for natives; an aboriginal parliament; and an independent tribunal to oversee and accelerate land claims. The commission says that spending money will lead to healthier and more productive aboriginal communities.
- 26 November 1996
Elections
- Changes to the *Elections Act* pass in the Commons. Under the revised Act, voting hours will be staggered across the country so that voters in the west can cast their votes before results in the east have decided the election.
- 27 November 1996
Education
- The Senate approves a revised version of Newfoundland's original constitutional amendment to reduce the role of churches in the school system. Since the Senate cannot kill a constitutional amendment once it is passed by Commons a second time, Justice Minister Allan Rock says the original amendment will return to the House for its final passage. The change to Newfoundland's school system follows a provincial referendum in which 54 percent of voters supported the proposal. The process of constitutional amendment is necessary because the change involves conditions that were set out when Newfoundland joined Canada in 1949.
- 27 November 1996
Social Programs
- A national program to fight child poverty is supported, in principle, by federal and provincial social services ministers, but provincial representatives are waiting to see how much the program will cost before making a commitment. Federal Human Resources Minister Pierre Pettigrew says bureaucrats have been asked to brainstorm on ways in

which the two orders of government can work together to fight child poverty and to bring those ideas to their January meeting.

29 November 1996
Sovereignty

The Supreme Court of Canada receives applications from Saskatchewan, Manitoba, and the two territories to intervene in Ottawa's constitutional reference on Quebec separation. Quebec lawyer Guy Bertrand, Quebec's Grand Council of Cree, the Algonquins of Barrier Lake, and other groups also hope to come before the court during the hearing expected next summer. Meanwhile, the Quebec government says it will not participate in the case.

2 December 1996
Leadership

Bloc Québécois Leader Michel Gauthier steps down.

3 December 1996
Agriculture

Agriculture Minister Ralph Goodale introduces legislation that would change the way the Canadian Wheat Board operates. Most significantly, it would end the Wheat Board's monopoly over Prairie grain sales.

6 December 1996
Social Programs

Federal Minister of Human Resources, Pierre Pettigrew, and Alberta's minister of advanced education and career development, Jack W. Ady, sign an agreement that transfers the responsibility for labour market development to the province. The \$317 million deal is part of Ottawa's decision to offer all provinces and territories opportunity to take responsibility for the design of active labour market development measures for Employment Insurance Clients. Under the new deal, all services for the unemployed will be under one roof in the hope that more people will have access to employment programs.

7 December 1996
Sovereignty

The Quebec Liberal Party takes a new stand on the constitution in order to reduce the threat of separation. The party proposes that Quebec's distinct society status should be entrenched in the constitution with a clause that requires courts to recognize its unique position. The proposal also includes a guarantee of three Quebec judges on the Supreme Court, provincial priority over shared jurisdiction with Ottawa, and the ability to limit Ottawa's spending power in provincial jurisdictions. Liberal Leader Daniel

Johnson says that if Canada adopts the proposal and thereby shows that change is possible, another divisive sovereignty referendum could be avoided.

9 December 1996
Education

Newfoundland introduces changes to its education laws in the House of Assembly. Under the changes, parents will be asked what type of religion they want their children to be taught and the majority responses will determine the religious designation of each school. Education Minister Roger Grimes wants to run an interdenominational school system, but also respects the rights of single denominations to have their own schools.

12 December 1996
Aboriginal Peoples

Indian Affairs Minister Ron Irwin is booed from the public gallery as native leaders express their discontent for the newly revised *Indian Act*. Native leaders accuse the government of failing to consult them, as well as failing to fulfill the recommendations outlined by the Royal Commission on Aboriginal Peoples.

12 December 1996
Lieutenant-Governor

Prime Minister Jean Chrétien appoints Lise Thibault as Quebec's new lieutenant-governor. Thibault, disabled-rights activist and television personality, is to replace Jean-Louis Roux who resigned last month. Like Roux, Thibault is also an acknowledged federalist but she says she will keep politics out of her new position. Chrétien also appointed Hilary Weston, Toronto businesswoman and author, as Ontario's lieutenant-governor, and medical scientist Dr. A.M. House to the position in Newfoundland.

13 December 1996
Social Programs

New Brunswick signs a \$237 million accord to take over job training and other employment services from the federal government.

17 December 1996
Industrial Development

Federal Industry Minister John Manley announces that Montreal-based Bombardier Inc. will receive more federal assistance. The company will use the additional \$57 million in its de Havilland division for research and development on the Dash 8-400. The project is expected to create up to 1,000 jobs and advance Canada's aerospace industry.

19 December 1996
Demography

Statistics Canada reports that the first six months of 1996 saw a net loss of 12,792 residents moving from Quebec to other provinces. Premier Lucien Bouchard does not attribute the high migration levels to Quebec's uncertain future, but rather to English-speaking Quebecers who have the mobility to leave for economic reasons. Liberal Leader Daniel Johnson is concerned that it is language policies that are causing the exodus from Quebec.

3 January 1997
Language

English-rights crusader Howard Galganov announces he is dissolving his campaign for English-minority language rights due to lack of financial support from anglophones. Galganov first attacked the provincial language laws by boycotting stores that did not have English on their signs. Later, he took his grievances to Wall Street but failed to draw much attention to the issue.

4 January 1997
Unity

Ottawa launches a 12-part French-language series on a Quebec network to advertise government services and programs which are available to Canadians. Critics say the commercials have been introduced to increase Liberal popularity in Quebec, while a representative from the Human Resources Department denies any political motivation.

7 January 1997
Infrastructure

Ottawa announces that it wants to extend its job-creating infrastructure program for a fourth year by offering the provinces an extra \$425 million. Treasury Board President Marcel Massé predicts the extension could lead to up to 2,500 new projects, giving rise to as many as 20,000 jobs in areas that will improve Canada's roads, sewers, and other infrastructures.

9 January 1997
Fisheries

Federal Fisheries Minister Fred Mifflin announces that Ottawa is going ahead with its plans to cut the BC salmon stock in half and to permit fishers to buy a licence for more than one area. Ottawa will provide \$5 million to help troll and gillnet fishers stack licences and \$8 million to assist those whose fishing gear has been rendered useless under the new licensing regulations. BC Fisheries Minister Corky Evans criticizes Ottawa's plan and says he wants to see control over fisheries put into provincial hands.

10 January 1997
*Industrial
Development*

Ottawa lends Pratt and Whitney Canada Inc. of Longueuil, Quebec \$147 million to enable the US-owned aerospace firm to maintain its engine production in Canada.

17 January 1997
Taxes

Ottawa and three Atlantic provinces try to sort out some of the controversial aspects of a plan to harmonize provincial and federal sales taxes. Under the new plan, the 15 percent levy will be buried in consumer prices but retailers will be able to mark the cost before and after taxes on their price tags. Businesses in New Brunswick, Newfoundland, and Nova Scotia are concerned that the blended tax will put the provinces at a disadvantage because prices will be inconsistent with national advertising.

17 January 1997
Energy

Quebec Premier Lucien Bouchard agrees to "exploratory talks" with Newfoundland Premier Brian Tobin regarding the Churchill Falls power contract. On 19 November, Tobin had warned that if Quebec separates it will lose the contract.

17 January 1997
Sovereignty

Chief Justice Antonio Lamer gives permission for 13 groups to intervene in the federal government's court reference on whether or not Quebec can secede unilaterally. Saskatchewan and Manitoba are the only two provinces that will intervene, along with the territories which will be arguing largely for native rights.

20 January 1997
Trade

Team Canada returns home after a 12-day trade mission to Asia made up of about 400 business representatives and nine premiers, including Quebec Premier Lucien Bouchard. While Bouchard maintains that the mission has not changed his separatist goals, he did keep internal politics out of the trip in order to focus on bringing jobs into the country. But other interprovincial disagreements did arise. Manitoba Premier Gary Filmon and British Columbia's Glen Clark criticized New Brunswick Premier Frank McKenna for attempting to lure business from other provinces into his own. The team signed a total of over \$2 billion in deals with Thailand, South Korea, and the Philippines.

23 January 1997
Education

In an attempt to reflect changing demographics and improve efficiency, Quebec hopes to produce a constitutional

amendment which would allow denominational school boards to be replaced by linguistic boards. The proposal is met with dissent from some sovereigntists who are concerned that by doing so Quebec will be forced to acknowledge the 1982 constitution which the province never signed. Quebec Premier Lucien Bouchard says that Quebec will be amending the 1867 *British North American Act*, rather than the revised *Constitution Act*, 1982.

25 January 1997
Health

A resolution is passed at the Parti Québécois' national council meeting to limit health care in English to those areas in which the anglophone population is over 50 percent. On 31 January Bouchard argues that his government provides satisfactory health-care service in English.

28 January 1997
Social Services

Canada's social services ministers agree in principle to adopt a plan to ensure that child benefits are not limited to those on welfare, but extended to the working-poor. According to the plan, Ottawa will increase its contribution to the child tax benefit and provincial welfare payments for children will be decreased. Money saved by the provinces will be used by them to design and deliver aid to poor families with children in a manner that fosters work incentives through programs such as day care and school lunches.

29 January 1997
Health

Provincial and territorial health ministers release a report titled *A Renewed Vision for Canada's Health System* which says medicare should be preserved but changes should be made to the universal system. The report calls on Ottawa to establish a panel of experts to assist in settling disputes which arise over medicare rules and transfer payments. In addition, the provinces call for a new interpretation of the *Canada Health Act* in order to give provinces a greater role in health-care decisions.

4 February 1997
Health

Health Minister David Dingwall welcomed the report of the National Forum on Health, *Canada Health Action: Building on the Legacy*, which maps out a long-term plan for reforming the health-care system and improving the health of Canadians. The report notes that maintaining the five principles of the *Canada Health Act* are critical to preserving medicare while flexible enough to accommodate organized reforms.

7 February 1997
Infrastructure

Alberta is the first province to sign on to the federal government's new infrastructure offer. Both the provincial and municipal governments will match the \$35 million provided by Ottawa in order to improve roads, sewers, and bridges. It is estimated that the deal will create 1,800 jobs.

12 February 1997
Education

Prime Minister Jean Chrétien says Ottawa needs evidence that there is a consensus among Quebecers to move from religious-based school boards to linguistic boards before a constitutional amendment can be made. Members of Alliance Quebec, an English-rights lobby group, want to ensure that the constitution entrenches the rights of anglophones to their own schools and school boards — a request that Quebec Premier Lucien Bouchard has rejected. A constitutional amendment is necessary because the denomination school boards are protected under the 1867 *British North America Act*.

18 February 1997
Budget

Federal Finance Minister Paul Martin tables the pre-election budget in the Commons. He announces that while the government plans to focus on bringing down the deficit, an additional \$1 billion a year will be invested in social programs. The deficit is now at a 15-year low and Martin predicts that by 1998-99, for the first time in almost 30 years, Ottawa will not have to borrow money. Martin says there will not be cuts to taxes since he does not want to "jeopardize the basic values of Canadians." He also introduces a new child tax credit for working-poor families, created in cooperation with the provinces, which will cost Ottawa \$600 million. Prime Minister Jean Chrétien comments that this is a "down payment on social justice." Martin also announces that Ottawa will spend \$425 million for an infrastructure program designed to encourage provinces to improve roads, bridges, and sewers. Other highlights include:

- a \$225 million Youth Employment Strategy to create jobs and internships for 139,000 students;
- \$300 million over three years to be invested in improving the delivery of better health services to Canadians; and
- selective tax cuts for low-income families, charities, the disabled, students, and parents saving for their children's future education

- 21 February 1997
Trade
- Quebec Premier Lucien Bouchard announces that he will lead his own trade mission to China in November and to Latin America next year. Bouchard plans to focus on Quebec's economy and on building business connections both with Canadian provinces and the rest of the world.
- 24 February 1997
Aboriginal Peoples
- Native leaders are outraged by Ottawa's failure to act on at least some of more than 400 recommendations set out in the Royal Commission on Aboriginal Peoples' report. The report calls on the government to increase its spending by \$1.5 to \$2 billion annually in order to improve aboriginal housing, health, and employment opportunities over the next two decades. Indian Affairs Minister Ron Irwin says Ottawa has already acted on some of the recommendations and that it would be too expensive to implement any of the others. Native Chief Ovide Mercredi says that in order to be heard, Indian leaders will participate in a one-day protest by slowing traffic on the Trans-Canada Highway.
- 28 February 1997
Sovereignty
- Ottawa presents its argument to the Supreme Court of Canada regarding Quebec's right to separate. The argument, which is the most formal condition Ottawa has ever made in the long-standing sovereignty debate, is that Quebec must use the constitution to take its leave.
- 28 February 1997
Justice
- At a meeting of Canada's justice ministers, federal Minister of Justice Allan Rock says Ottawa will not provide Quebec with the \$77 million it has requested in order to retroactively fund its young offender services. The program reflects Quebec Justice Minister Paul Begin's belief that through rehabilitative measures, young offenders can be returned to society rather than being put in jail.
- 7 March 1997
Immigration
- Ottawa announces that most provinces will receive more immigrant resettlement payments from a new fund of about \$63 million a year. The new money has been introduced to correct an imbalance in the allocation of federal immigration funds. Under the new program federal dollars for immigration services will be allocated more appropriately, according to the immigration rates of each province. The announcement followed a meeting on 6 March in which Citizenship and Immigration Minister Lucienne Robillard

promised British Columbia an additional \$22.4 million for services to assist BC-bound immigrants. The promise prompted Premier Glen Clark to end the province's controversial welfare-residency requirement.

11 March 1997
Elections

Premier Ralph Klein and his Conservative government return to power after a landslide victory in the Alberta election. The Tories formed another majority government with 63 of the 83 seats in the legislature. The Liberals won 18 seats and the NDP won two.

15 March 1997
Elections

Gilles Duceppe is elected as the new leader of the Bloc Québécois.

20 March 1997
Taxes

Legislation for a new blended sales tax is passed in the House of Commons. The BST, which merges the federal GST and provincial sales taxes into one, will go into effect 1 April in Newfoundland, New Brunswick, and Nova Scotia. The single 15 percent levy will make those items formerly taxed at both the federal and provincial level less expensive, while making goods and services which were previously exempt from provincial sales taxes more costly.

20 March 1997
Premiers

John Savage announces his resignation as Nova Scotia's premier. During his time as premier, Savage and his Liberal Party introduced a number of unpopular changes in the province including drastic health reforms, a wage freeze for civil servants and the blended sales tax. Savage hopes that by electing a new leader the Liberals will have a better chance at maintaining their popularity.

24 March 1997
Budgets

Quebec's budget for 1997-98 is announced by Finance Minister Bernard Landry. Landry says his government plans to cut \$2 billion of its provincial deficit and to eliminate it entirely by 1999-2000. In his budget, Landry announces a 15 percent personal income tax cut for households that earn under \$50,000. The cut is financed mainly by raising the provincial sales tax one percentage point to 7.5 percent. Other highlights of the budget include: raising vehicle-registration fees, increasing the cost of cigarettes, spending half a billion dollars to stimulate private sector investment and cracking down on black

market activity — specifically construction, alcohol, and tax evasion.

24 March 1997
Social Programs

At a meeting in Ottawa, Prime Minister Jean Chrétien and Newfoundland Premier Brian Tobin sign a \$308 million labour-market accord. Newfoundland is the third province to sign onto the deal, but unlike the devolution agreements with Alberta and New Brunswick, Newfoundland's program will be co-managed with Ottawa.

25 March 1997
Budgets

BC's Finance Minister Andrew Petter introduces the 1997-98 provincial budget. Petter promises to increase spending on health and education while cutting last year's \$395 million deficit in half. A balanced budget is predicted for 1998-99 and surplus of \$110 million for the following year. In order to avoid raising taxes, Petter has proposed a series of fee hikes on such things as fishing licences, cellular phones, and safety inspections.

25 March 1997
Agriculture

Federal Agriculture Minister Ralph Goodale announces that 62.9 percent of barley growers voted in favour of keeping the Wheat Board and asks farmers to respect the outcome of the survey.

26 March 1997
Education

The Parti Québécois tables a resolution in the provincial legislature requesting the amendment of section 93 of the *British North America Act* to allow a change from religious to linguistic school boards. Premier Lucien Bouchard hopes that the amendment will be passed at the federal level before the next federal election, in order to put the reforms into motion by September 1998.

14 April 1997
Unity

Only a day before the Liberals are expected to call a federal election, the party is bombarded with criticism for the way it has handled national unity. Lawyer Guy Bertrand, granted intervenor status in Ottawa's constitutional reference on Quebec separation, says the Liberal government has failed to maintain the country's constitutional rights and wants the government to put up a stronger fight against separation. Meanwhile, former Prime Minister Brian Mulroney tells an audience in Toronto that the Liberals have failed to deal with Quebec's historic grievances and says constitutional talks must be reopened. By

ensuring the province's language and culture in the constitution, Mulroney says a vote in favour of independence will be avoided. But the premiers of Ontario, British Columbia, and Alberta disagree with Mulroney and say they have no plans to reopen constitutional talks.

15 April 1997
Education

The Quebec National Assembly votes unanimously in favour of a motion which asks Ottawa to amend the constitution to allow the province to move from religious to linguistic-based school boards. The opposition supported the motion after it was adjusted to allow the English-speaking minority to govern their own schools. The motion stipulates that the constitutional change is being made to the original *British North America Act*, rather than the *Constitution Act*, 1982, which Quebec has not signed.

17 April 1997
Fisheries

Fisheries Minister Fred Mifflin announces that 1 May will see the reopening of a small east coast cod fishery. In 1993, about 40,000 fishermen were put out of work when Ottawa closed the ailing groundfishery. It is estimated that the reopened fisheries will bring in \$10 million to Newfoundland's fishers and provide thousands of them with jobs.

18 April 1997
Aboriginal Peoples

First Nations Chief Ovide Mercredi is told that Prime Minister Jean Chrétien will be unable to meet with aboriginal leaders before the federal election. Chrétien assures Mercredi that the recent report of the Royal Commission on Aboriginal Peoples is being studied, but Mercredi wants to see action on the commission's recommendations and says that native leaders will keep after Chrétien throughout the election period. On 17 April natives across Canada rallied on streets and highways to protest poverty on native reserves and the government's failure to respond to the royal commission recommendations.

21 April 1997
Social Programs

Prime Minister Jean Chrétien and Quebec Premier Lucien Bouchard sign a labour market agreement, in which Ottawa agrees to provide Quebec with almost \$3 billion over five years from the Employment Insurance Account.

21 April 1997
Budget

Treasurer Stockwell Day introduces Alberta's third consecutive surplus budget. Cuts to social spending and a booming economy have enabled the reelected Conservatives to cut \$3.45 billion from the debt over the past three years. It is expected that the province will reap a surplus between \$154 million to \$744 which will go toward increased social spending.

22 April 1997
Education

Ottawa tables a motion put forward by Quebec to move from religious to linguistic-based school boards in the province. While it appears that Ottawa is working to give Quebec the constitutional change it has requested, critics have charged that the motion is nothing more than an empty gesture since Parliament will be dissolved when the election is called.

25 April 1997
Unity

Prime Minister Jean Chrétien makes unity the priority in his election campaign. In a speech at the Canadian Club in Toronto he says, "Keeping Canada united is the single most important duty and responsibility of a national government and of a prime minister." Chrétien says he plans to use step-by-step measures to improve relations with all provinces.

26 April 1997
Election

The Bloc Québécois unveils its party platform which attacks the Liberals for failing to bring down unemployment rates, promises to press Ottawa to compensate Quebec for its blended sales tax, and calls for the end of funding directed toward the promotion of Canadian unity.

26 April 1997
Justice

A bill aimed at easing Quebec's motorcycle gang wars is rushed through Parliament and given royal assent. Over the past three years, battles between the Hell's Angels and the Rock Machine over Quebec's fruitful drug trade have resulted in at least 48 deaths.

27 April 1997
Election

Prime Minister Jean Chrétien calls a national election. Chrétien and the Liberals face criticism from other party leaders for calling the 2 June election after being in office for only three and a half years.

30 April 1997
Flood Relief

Manitoba braces for a major flood as residents of Winnipeg upgrade their defences against the looming natural disaster. About 2,000 soldiers have come from across Canada to help communities build dikes and evacuate the threatened areas. Reform Leader Preston Manning criticizes Prime Minister Jean Chrétien for going ahead with his federal election call while Manitoba is in a state of emergency. Chrétien says that according to a previously-unused election rule, the 2 June date could be postponed for 90 days if the Chief Electoral Officer believes it is necessary. Meanwhile, candidates in Manitoba are postponing their campaigns in order to help their communities build sandbag dikes.

6 May 1997
Budget

Ontario's Conservative government releases its \$57 billion budget for 1997-98. The budget reduces spending by \$2.3 billion and brings the deficit down to \$6.6 billion from last year's \$7.5 billion and is expected that the books will be balanced by 2000-2001. Ontario Finance Minister Ernie Eves introduces phase two of his three-year plan – which cuts provincial income taxes by 22.5 percent and says the federal government should follow suit. The tone of the budget suggests serious strains in the relations between Queen's Park and Ottawa, reflected in Eves's statement that his government will explore the possibility of setting up its own income tax collection system independent of Ottawa. Other budget highlights include:

- a \$124 million drop in education spending, but \$650 million available for building and renovating schools;
- \$250 million raised by universities and colleges will be matched by the government for tuition assistance; and
- \$40 million promised last year for child care will not be spent, but will be used for a low-income tax credit.

7 May 1997
Sovereignty

A Quebec City journalist reports that, in his new book, Jacques Parizeau says he had planned to separate his province from Canada only days after a yes vote in the 1995 sovereignty referendum. Parizeau quickly denies the report and claims that the journalist twisted his words. Regardless of Parizeau's actual intentions, the release of his book has done nothing to help Bloc Québécois leader Gilles

Duceppe's already faltering election campaign. The book is ammunition for other leaders who are using it as evidence that separatists cannot be trusted.

12 May 1997
Election

Party leaders participate in the English federal election debate. National unity is a major issue, but discussion also covers tax cuts, health care, unemployment, and the effectiveness of Parliament. On 13 May, the French election debate is cut short when moderator Claire Lamarche collapses and is taken to hospital. The discussion ends just as Prime Minister Jean Chrétien is asked what he would do if, in another referendum, Quebec voted by 50 percent plus one in favour of sovereignty. On 15 May it is announced that party leaders will have another opportunity to participate in the French-language debate which will focus solely on the issue of national unity.

13 May 1997
Emergency Aid

The Globe and Mail reports that as Manitoba's devastating flood waters recede, the province faces over \$150 million in damages. Manitoba is paying flood claims of up to \$100,000 and Ottawa has sent \$25 million in aid. In addition, citizens across the country have donated over \$12 million to local charities.

15 May 1997
Health

Federal Health Minister David Dingwall threatens to amend the *Canada Health Act* in order to prevent the opening of a private health-care clinic in Alberta. The new facility, expected to be opened in July, will cater its private medical services to the Workers' Compensation Board, Americans, native groups, and private corporations. Dingwall is surprised the facility has not met with dissent from the Alberta government, which has been penalized by Ottawa for charging patients extra fees.

2 June 1997
Election

The Liberals win a slim majority in the federal election, marking the first time the party has won successive majorities since the 1950s. The Liberals took 155 of 301 seats, owing a large part of their success to overwhelming support from Ontario, where the party captured 101 of 103 seats. Both the NDP and Conservative Party regained party status with 21 and 20 seats respectively; many of which were won in Atlantic Canada. Meanwhile support for the Bloc Québécois slipped from 54 to 44 seats. As a result,

the Bloc lost its status as official Opposition and was replaced by the Reform Party, which won 59 seats in the west.

Members elected by province/territory and party:

	<i>Lib</i>	<i>Ref</i>	<i>BQ</i>	<i>NDP</i>	<i>PC</i>	<i>Ind</i>	<i>Vac</i>
Newfoundland (7)	4	0	0	0	3	0	0
PEI (4)	4	0	0	0	0	0	0
Nova Scotia (11)	0	0	0	6	5	0	0
New Brunswick (10)	3	0	0	2	5	0	0
Quebec (75)	26	0	44	0	5	0	0
Ontario (103)	101	0	0	0	1	1	0
Manitoba (14)	6	3	0	4	1	0	0
Saskatchewan (14)	1	8	0	5	0	0	0
Alberta (26)	2	24	0	0	0	0	0
BC (34)	6	24	0	3	0	0	1
Yukon/NWT (3)	2	0	0	1	0	0	0
<i>Total (301)</i>	<i>155</i>	<i>59</i>	<i>44</i>	<i>21</i>	<i>20</i>	<i>1</i>	<i>1</i>

	<i>1997</i>	<i>1993</i>	<i>1988</i>
Liberals	155	177	83
Reform	59	52	0
Bloc Québécois	44	54	0
New Democrats	21	9	43
Progressive Conservatives	20	2	169
Independent	1	0	0
Vacancies	1	0	0
<i>Totals</i>	<i>301</i>	<i>295</i>	<i>295</i>

6 June 1997
Language

The Quebec National Assembly votes 63-24 to bring back the Commission de protection de la langue française. The bill was introduced last year by Language Minister Louise Beaudoin in order to reestablish the commission, which ensures that everything in Quebec meets the stipulations of Quebec's French Language Charter. The commission was established by the first Parti Québécois but abandoned in 1993 by the late Premier Robert Bourassa.

11 June 1997
Cabinet

Reelected Prime Minister Jean Chrétien names his new Cabinet. He announces that the emphasis of this Cabinet will be on balancing the budget, improving and expanding

the health-care system, and providing for Canada's children. A number of the positions went to left-of-centre Liberals including Sergio Marchi in international trade, David Collenette in transport, and Allan Rock as health minister. Paul Martin was reappointed as finance minister. Sheila Copps maintained her heritage portfolio but lost her position as deputy prime minister to MP Herb Gray.

19 June 1997
Unity

Premier Lucien Bouchard says that Canada would inevitably accept a partnership with an independent Quebec in order to ensure payment of the debt and trading opportunities. Members of the Parti Québécois agree in general that if another sovereignty referendum was cast in their favour they would proclaim sovereignty regardless of whether or not Canada agrees to a partnership. Bouchard predicts that the federal election, which displaced the Bloc Québécois as official Opposition, will further the sovereignty movement.

19 June 1997
Infrastructure

At a meeting of transportation ministers, the federal minister, David Collenette, tells his provincial counterparts that there will be no money to improve Canada's highways until the federal budget is balanced. For each of the past two years Ottawa has provided \$300 million in order to improve efficiency and safety on Canada's roads.

24 June 1997
Unity

The new federal justice minister, Anne McLellan, tells the *Sun* that Canada can no longer be held "hostage" to separatists and that Quebec must clarify the process and implications of independence. McLellan adds that in the instance of a yes vote, Quebec could be partitioned to allow certain areas to stay within Canada. Separatists, in reaction to her statement, accuse McLellan of pandering to the west.

Note: The principal source for this chronology was *Canadian News Facts*. Other sources included *The Globe and Mail* and federal web sites.

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