

**Can Canada Survive?**  
Under What Terms and Conditions?

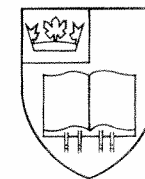
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survivre ?**  
Comment et dans quelles  
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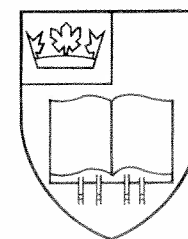
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fait pour réveiller les anciennes révoltes. Et même pour les justifier moralement, ce que plusieurs, en ce pays, semblent n'avoir jamais compris, et qui est pourtant une leçon centrale de leur propre histoire.

THOMAS FLANAGAN, FRSC

## Canada and Quebec: Where Are We Now?

### *Abstract*

After decades of procrastination, the government of Canada has finally begun to develop a plan to deal with the possible separation of Quebec. The main elements of the plan to have emerged thus far are (1) insistence on the rule of law, thus excluding a unilateral declaration of independence; (2) refusal to be bound by any future referendum in which the separation question is unclear; (3) demand for a supermajority (greater than 50 percent +1) before recognizing the result of a future referendum; (4) the partition of Quebec in case of separation. It is argued in the paper that the first two elements of the plan are reasonable and useful, but that the latter two elements are impractical and dangerous because they have the effect of making a legal separation impossible and may drive Quebec's leaders into reckless adventurism.

### *Le Canada et le Québec : où en sommes-nous ? – Résumé*

Après plusieurs dizaines d'années d'attentisme, le gouvernement du Canada a enfin commencé à songer à un plan en cas de séparation du Québec. Les principaux éléments de ce plan qui sont apparus jusqu'à présent sont (1) le respect impératif de la primauté du droit, ce qui exclut toute déclaration unilatérale d'indépendance; (2) le refus de concéder le résultat d'un référendum dont la question concernant la séparation ne serait pas claire; (3) la nécessité impérieuse d'une super-majorité (supérieure à 50 pour cent +1) avant toute reconnaissance du résultat d'un nouveau référendum; et (4) la partition du Québec en cas de séparation. Notre communication soutient que les deux premiers éléments du plan sont raisonnables et utiles, mais que les deux derniers sont irréalistes et dangereux étant donné qu'ils rendraient toute séparation juridiquement impossible et risqueraient de conduire les dirigeants du Québec à un aventurisme irréfléchi.

In the late days of the 1995 referendum campaign, Prime Minister Chrétien promised new constitutional measures regarding Quebec's place in Confederation. In a flurry of energy shortly afterwards, he had the House of Commons pass a resolution recognizing Quebec as a distinct society; and he pushed through Parliament the "five-region veto", giving Quebec a legislated version of the constitutional veto it had long demanded.<sup>1</sup>

The prime minister had wanted constitutional amendments; but, because he could not get the necessary support from the provinces, he had to settle for a piece of legislation and a House of Commons resolution.<sup>2</sup> In early 1996 he appointed Stéphane Dion minister of intergovernmental affairs with instructions to get provincial support for constitutionalizing these measures. One scenario would have been to put these issues on the table at a first ministers' meeting called no later than April 1997 to discuss the various amending formulas in the *Constitution Act, 1982*. Section 49 of that act requires such a meeting to be held within fifteen years to review the amending formulas, which came into force in April 1982.

Now, however, it appears that nothing will happen on the constitutional front. At their meeting of 21 June 1996, the prime minister and premiers seemingly endorsed Saskatchewan Premier Roy Romanow's view that section 49 had already been discharged in the first ministers' meetings that led up to the Charlottetown Accord. Some constitutional experts disagree with that view.<sup>3</sup> That the prime minister chose to accept it now was due less to Mr. Romanow's persuasiveness than to the political reality that the provincial premiers, and the country at large, would not support entrenchment of the distinct society concept and of the five-region veto.

Meanwhile, there will be more "rebalancing" of federal and provincial responsibilities. The Canada Health and Social Transfer has already given the provinces more control over social assistance. The federal government has announced that it will give labour-market training to the provinces, although the politics of the transfer will be long, slow, and painful; and it has expressed willingness to discuss forestry, mining, tourism, and other areas of overlapping jurisdiction.<sup>4</sup> These and similar changes can all be accomplished without amending the constitution.

Such developments are modestly encouraging. On the one hand, a megaconstitutional settlement involving special status for Quebec – by

whatever name – would never be acceptable across Canada. In fact, I believe it would quickly lead to the break-up of the country. ~~Because Quebec provincial politicians of all parties have a long list of demands for additional powers, they would interpret constitutional recognition of "distinct society" as a signal to press Ottawa with renewed energy, leading to an inevitable backlash in the other provinces.~~ On the other hand, Quebec has legitimate grievances growing out of the federal government's post-World War II invasion of provincial jurisdictions. The constitution of 1867 worked, and we should get back to it. Movement in that direction, achieved by consultation, administration and legislation rather than constitutional amendment, might keep Quebec in Canada.

However, as an ~~ethnonationalist~~ movement, Quebec separatism is fundamentally concerned about sovereignty and symbolism, not the heads of power in a federal system. We should pursue devolution not to "keep Quebec in Canada" but because it is the only way to bring our debt-ridden governments under long-term control and restore fiscal sanity to the nation. If that makes Quebec content to remain in Canada, well and good, but don't count on it.

It is good news, therefore, that the federal government has begun to develop a plan – widely known as Plan B, after the title of Gordon Gibson's book – to deal with an attempted separation by Quebec.<sup>5</sup> This is one of the most important developments in recent Canadian history because, for the last thirty years, the initiative has always lain entirely with Quebec. Now, after long and shameful procrastination, the leaders of Canada are finally taking some steps to protect the interests of Canada. The odd thing, really, is that it has taken so long. Quebec, after all, has had its own version of Plan B – the threat to separate – at least since Premier Daniel Johnson published *Egalité ou Indépendance* in 1965.<sup>6</sup>

A full-fledged Plan B would include steps for reconstituting Canada after the departure of Quebec; but, for understandable political reasons, the federal government has not gone that far. To begin discussing a new constitution *sans Québec* would smack too much of expelling Quebec from confederation. It may also be true, as I suggest below, that this prime minister and his government cannot truly conceive of an independent Quebec and of a Canada without Quebec, so that their Plan B is best

understood as a tactical manoeuvre to forestall separation rather than a realistic contingency plan to deal with it.

Be that as it may, the four most important elements of the government's plan revealed thus far are the following:

(1) **Rule of law.** Through its belated intervention in the Bertrand case, followed by its decisions to refer the issue of unilateral separation to the Supreme Court of Canada, the federal government has finally committed itself to upholding the constitution. This means that a unilateral declaration of independence will not be recognized, and that Quebec will be able to separate from Canada only through passage of a constitutional amendment. Adherence to the constitution is the best way to protect the interests of all residents of Canada, both inside and outside Quebec. Inside Quebec, the constitutional requirement for the National Assembly to give final ratification to any separation agreement helps to protect its citizens from being herded like lobsters into Jacques Parizeau's famous pot; (switching metaphors), the legislature, and hence the people, will have to take one last look before they leap.<sup>7</sup> The National Assembly might well hold a second referendum to approve a negotiated agreement, an idea promised by René Lévesque in 1980 and recently revived by José Woehrling, a prominent constitutional scholar from the Université de Montréal.<sup>8</sup> Outside Quebec, the requirement to get the approval of Parliament and the provincial legislatures makes it harder for Quebec to dictate terms of separation to the rest of the country.

Notwithstanding the progress made, a major question is still to be answered: which amending formula governs the separation of a province? Patrick Monahan has argued that, under section 41(a) of the *Constitution Act, 1982*, the unanimity rule would have to be invoked because the offices of governor-general and lieutenant-governor are affected.<sup>9</sup> José Woehrling thinks separation might be possible under the general procedure of section 38, with approval of seven provinces having 50 percent of the population of the provinces.<sup>10</sup> Peter Hogg also once thought that the general procedure might suffice, but now seems to be leaning towards unanimity.<sup>11</sup>

Beyond that debate, further difficulties abound. To what extent, and through what mechanisms, would the approval of aboriginal peoples, inside and perhaps outside Quebec, be required? Alberta and British Columbia already

have legislation on their books requiring that provincial referendums be held before their legislative assemblies ratify constitutional amendments. Would a national referendum also become politically, if not legally, necessary? And what about the five-region veto? If this newly legislated formula is followed, Ontario, British Columbia, Alberta, and certain combinations of the smaller provinces would all be able to veto the departure of Quebec.

In theory, this could all be sorted out, perhaps by another reference to the Supreme Court of Canada at the appropriate time. In practice, however, the Canadian constitutional amendment process is so gridlocked that, in the event of a crisis, it may be necessary to act quickly and fix up the legal niceties afterwards. Insisting on the rule of law strengthens Canada's hand because it precommits the government to protecting the national interest, but a government faced with a genuine secession crisis cannot let itself be tied up in knots by constitutional lawyers.

(2) **The question.** The second element of the emerging federal position is that, in any future Quebec referendum on separation, the rest of the country will have to approve the wording of the question if the result is to be taken seriously. The question will have to deal unambiguously with independence and separation from Canada. Legally, the government of Quebec can ask whatever it wants in a referendum, but it cannot expect questions that assume the reality of a hypothetical partnership or association with Canada to carry any weight in the rest of the country.

Again, this is a great step forward. If the sovereignists hold as many referendums as they want on whatever questions they choose, sooner or later they will find a way to elicit a Yes vote from the Quebec electorate. There should be some limitation on the frequency with which such referendums can be held – perhaps once a generation, on Thomas Jefferson's principle that "the earth belongs in usufruct to the living", so that constitutions should be renewed every generation;<sup>12</sup> but until that limitation is established, consultation on the question is a step towards protecting Canada's interests.

(3) **Supermajority.** Several statements by Jean Chrétien and Stéphane Dion suggest that a majority greater than 50 percent +1 will be required in a future referendum on separation. The case for a supermajority is

convincing at a logical level, but previous federal and provincial referendums in Canada have always used simple majority as a decision principle.<sup>13</sup> For the federal government now to demand a supermajority looks like bad faith and gives some credibility to Lucien Bouchard's complaint that Canada is a prison for Quebec.<sup>14</sup>

If we set the bar for separation so high that no one can jump over it, the sovereignists may try to run under it by resorting to a unilateral declaration of independence, provoking legal, political, and economic chaos and hoping that something will come out of it. They might even dispense with a referendum altogether and go back to the pre-1976 Parti Québécois doctrine that a PQ victory in a Quebec provincial election would legitimate independence.<sup>15</sup> Our federal leaders should back away from the idea of a supermajority before it gets rooted in public opinion. On this issue, the Reform Party's position in favour of a simple majority is the correct one.<sup>16</sup>

(4) **Partition of Quebec.** Federal ministers have now said several times that, if Canada is divisible, so is Quebec, and these statements have conjured up a burgeoning partition movement. Demands are now being made for Canada to retain sovereignty over not just the Indians and Inuit of northern Quebec, but also the anglophone communities along the Ontario border as well as the anglophone and allophone areas of Montréal.

As with supermajority, the idea of partition is irrefutable at a logical level.<sup>17</sup> Provincial boundaries are not sacred in Canada; Ontario, Quebec, and Manitoba, for example, have all undergone repeated and radical boundary changes since Confederation. There is no intrinsic reason why a constitutional amendment allowing Quebec to separate could not adjust boundaries at the same time. However, the partition proposals now being made would cripple Quebec. For Canada to retain native peoples would mean the loss to Quebec of the whole James Bay power complex; and the partition of Montréal would strike at the heart of Quebec's economy, to say nothing of creating an unmanageable Canadian enclave within Quebec, as well as francophone enclaves within the Canadian enclave.

If separation ever happens, it is not in Canada's interest to turn Quebec into an economic basket case by taking away its major assets. How would a crippled Quebec economy ever pay interest on its share of the Canadian public debt or buy the products of Canadian industries? Moreover, it should

be evident that Quebec could only be partitioned by military force, poisoning relations between Quebec and Canada for generations to come. In any case, it is highly doubtful whether Canada has the necessary military power, given the long-term underprovisioning of our armed forces and the thoughtful relocation by Marcel Masse of the Canadian Forces' eastern supply base to a location in east Montréal where it could be blockaded by the Sûreté du Québec.

Statements by the prime minister and other members of the cabinet about a supermajority and partition make me wonder whether they are moving towards a new position, namely that Quebec will never be allowed to leave Canada under any conditions. Of course, this is not what they are saying. On the contrary, the minister of justice said in announcing the reference to the Supreme Court:

The leading political figures of all the provinces and indeed the Canadian public have long agreed that this country will not be held together against the will of Quebecers clearly expressed. And this government agrees with that statement. This position arises partly out of our traditions of tolerance and mutual respect, but also because we know instinctively that the quality and the functioning of our democracy requires the broad consent of all Canadians.<sup>18</sup>

None the less, insisting upon a supermajority and partition belies these words because it would make separation all but impossible. Maybe this is what Jean Chrétien meant in his famous statement that Canada is "inconceivable" without Quebec.

Again, this line of thought has some merit at a logical level. The media commentator Andrew Coyne is pushing it in his newspaper columns.<sup>19</sup> I was born and raised in the United States, where I grew up believing that the nation is one and indivisible. I still think that is true for the United States, and that the immense sufferings of the American Civil War have been outweighed in the cruel balance scale of history by the benefits of preserving the union. I would apply the same reasoning in Canada to the separation of other provinces – but not to Quebec. Most of the francophones of Quebec – the large majority of the province – think of themselves as a people separate from the rest of Canadians, and a democracy cannot keep separate peoples together by force without ceasing to be a democracy. If a



majority of Quebec's voters, responding to a clear question, decide they no longer want to be part of Canada, we should proceed to negotiate the separation.

Philip Resnick has argued that this position is self-contradictory because it would recognize Quebec francophones as a separate nation if they leave Canada but not if they stay.<sup>20</sup> He is right, in a sense, but the paradox is more apparent than real; it arises from ambiguity surrounding the word *nation*. Canada in its present form is what G.-E. Cartier called a "political nationality."<sup>21</sup> Loyalty to the nation arises from acceptance of common political institutions at the federal level. All sorts of provincial, regional, or ethnic identities can co-exist with the Canadian political nationality as long as those identities do not entail a claim for sovereignty, that is, a right of self-rule going beyond the Canadian constitution. In my view, the demand for special status for Quebec, in whatever vocabulary it may be couched, begins to eat away at this acceptance of a common political order. If francophone nationalists in Quebec must become a different nation, we had best recognize that reality and not twist the Canadian political nationality hopelessly out of shape by trying to accommodate fundamentally different identities.

This does not mean that Quebec has the right to issue a unilateral declaration of independence or to dictate the terms of departure. Canada must protect its own interests, and the negotiations will be very tough. But they must be carried on in good faith, to facilitate the departure of Quebec with minimum damage on all sides. They must not become a pretext to throw up one roadblock after another. That is why the government's talk of supermajority and partition alarms me, because I fear it signals lack of good faith in facing separation, if it should come to that.

In spite of these dark musings, I see cause for cautious optimism. Distinct society, special status, and asymmetrical federalism haunt us still, but they are stymied at the constitutional level. Meanwhile we move gradually, if not gracefully, towards trimming the responsibilities of the fiscally overextended federal government. And the new emphasis on the rule of law may inject a note of realism into Quebec politicians' perceptions of how far they can manipulate and intimidate Canada. All in all, the probability of Canada's survival within its present boundaries, while far from 100 percent, is greater than at any time since Pierre Trudeau patriated the constitution

against the wishes of Quebec provincial politicians in 1982 and Brian Mulroney chose to fan the embers of nationalist discontent in Quebec in his 1984 election campaign.

## NOTES

1. For an analysis of the five-region veto, see Thomas Flanagan, "Amending the Canadian Constitution: A Mathematical Analysis", *Constitutional Forum* 7 (1966), nos. 2-3, pp. 97-101.
2. Edward Greenspon and Anthony Wilson-Smith, *Double Vision: The Inside Story of the Liberals in Power* (Toronto: Doubleday Canada, 1996), pp. 333-348.
3. John D. Whyte, "A Constitutional Conference...Shall Be Convened...: Living with Constitutional Promises", *Constitutional Forum* 8 (1996), no.1, pp. 15-19.
4. Greenspon and Wilson-Smith, *Double Vision*, p. 366.
5. Gordon Gibson, *Plan B: The Future of the Rest of Canada* (Vancouver: Fraser Institute, 1994).
6. Thanks are due to Alan Cairns for making this point, as well as the one in the next sentence, in the discussion after my presentation.
7. On the possibility of internal reaction within Quebec against a Yes vote, see Stéphane Dion, "The Dynamic of Secessions: Scenarios after a Pro-Separatist Vote in a Quebec Referendum", *Canadian Journal of Political Science* 18 (1995), pp. 533-551.
8. José Woehrling, "Ground Rules for the Next Referendum on Quebec's Sovereignty", *Canada Watch* 4 (August 1996), p. 95.
9. Patrick J. Monahan, "Cooler Heads Shall Prevail: Assessing the Costs and Consequences of Quebec Separation", C. D. Howe Institute Commentary, no. 65, January 1995, pp. 7-8.
10. Woehrling, "Ground Rules for the Next Referendum on Quebec's Sovereignty", p. 96.
11. Peter W. Hogg, *Constitutional Law of Canada*, 3rd ed. (Toronto: Carswell, 1992), p. 5-32; Hogg, "The Effect of a Referendum on Quebec Sovereignty", *Canada Watch* 4 (August 1996), p. 97.
12. "Thomas Jefferson to James Madison, September 6, 1789", in Adrienne Koch, ed., *The American Enlightenment: The Shaping of the American Experiment and a Free Society* (New York: George Braziller, 1965), pp. 32-333.
13. Patrick Boyer, *Direct Democracy in Canada: The History and Future of Referendums* (Toronto: Dundurn, 1992), pp. 259-260. An exception in the Saskatchewan legislation is described on p. 198.
14. At greater length, see Thomas Flanagan, "Should a Supermajority Be Required in a Referendum on Separation?" in John E. Trent, Robert Young, and Guy Lachapelle, eds., *Québec-Canada: What Is the Path Ahead? Nouveaux sentiers vers l'avenir* (Ottawa: University of Ottawa Press, 1996), pp. 129-134.
15. William Johnson, *A Canadian Myth: Quebec, Between Canada and the Illusion of Utopia* (Montréal and Toronto: Robert Davies, 1994), p. 194.
16. Tu Thanh Ha, "PM May Not Co-operate If It's Yes", *The Globe and Mail*, 19 September 1995.

17. For an intelligent treatment of partition, see Scott Reid, *Canada Remapped: How the Partition of Quebec Will Reshape the Nation* (Vancouver: Arsenal Pulp Press, 1992).
18. Allan Rock's statement in the House of Commons, as reported in *The Globe and Mail*, 26 September 1996.
19. E.g., Andrew Coyne, "Ottawa's Move Won't Stop Quebec", *Calgary Herald*, 12 November 1996.
20. In a question from the floor after my presentation.
21. P. B. Waite, *The Confederation Debates in the Province of Canada /1865* (Toronto: McClelland & Stewart, 1963), p. 50.

CHARLES TAYLOR, FRSC

## Deep Diversity and the Future of Canada

### *Abstract*

Canada's problem is one that is becoming more and more identified in today's world as almost everyone's [how more than one nation can live together in the bosom of a single state.] In Canada's case, the solution is obvious, and indeed, much of it is already in place. [What is needed is a public recognition of the constituent "nations", and particularly of Quebec. But we seem about to astonish the world, which is watching us closely, by our inability to extend this recognition. As a consequence, the country is drifting towards break-up. Just because so little is being done to prepare for this, let alone head it off, the break-up promises to be extremely painful for everyone.]

### *L'avenir du Canada dans sa profonde diversité – Résumé*

Le problème du Canada se révèle de nos jours comme le problème de beaucoup de pays : comment faire vivre ensemble, au sein d'un même état, plus d'une « nation » ? Dans le cas du Canada, une solution adéquate de ce problème est évidente, et elle est déjà en partie réalisée : elle passe par la reconnaissance des « nations » constitutives du pays, et en particulier du Québec. Mais à la surprise du monde extérieur, qui nous regarde attentivement, le Canada semble incapable de se résoudre à entériner une telle reconnaissance. Par conséquent, le pays semble flotter à la dérive, vers une rupture qui, parce que très mal préparée, promet d'être extrêmement douloureuse.