



# The Quebec referendums

RESEARCH PAPER 13/47 25 July 2013

After a turbulent and violent history, relations between English-speaking and French-speaking Canadians remained difficult in the 20<sup>th</sup> century. In 1976, with the election to power of the Parti Québécois in the province, Quebec set in motion a process for an independence referendum. This first referendum, held in 1980, failed by a relatively wide margin.

After generally unsuccessful attempts to amend the constitution, a second referendum was arranged for 1995. The wording of the question, set only by the Quebec government, was highly controversial. There were heated debates about what an independent Quebec's relations with the rest of Canada would be, about currencies and about future membership of international organisations.

In the event, the referendum failed by the narrowest of margins. After the rejection, the Canadian Supreme Court made rulings on the role of the rest of Canada and the clarity of the question in any future referendum.

This paper gives a brief outline of separatism in Quebec, showing that many of the arguments in Canada are already being echoed in the debate about Scotland's future relationship with the rest of the UK.

Ben Smith

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## Summary

The forthcoming referendum on the future of Scotland has aroused interest in the referendums of 1980 and 1995 in Quebec, Canada. Many of the details of the legislative basis for the Scottish referendum are still to be decided. What has so far been agreed is explained in the Library Standard Note [Referendum on independence for Scotland](#), February 2013.

Questions about the degree of autonomy of the Canadian provinces and specifically about the status of Quebec were a constant of Canadian politics and, particularly in the period between the two referendums, there were serious attempts to amend the Constitution to satisfy some of the demands of the Quebec separatists. The constitutional reforms were not passed in the end and the Quebecers pressed ahead with their referendum plan.

The Quebec referendums were based on legislation passed by the National Assembly of Quebec and the questions were set by the Quebec government. Both campaigns were vigorously argued and attracted a high turnout. The Yes campaigns in both assumed a degree of cooperation from the remaining provinces of Canada in the event of a Yes victory, cooperation that was not guaranteed.

The wording of the question was highly controversial in the second referendum, with No campaigners arguing that it was not clear and that that lack of clarity favoured the Yes side. Arguments over the cost of separation, the currency an independent Quebec would use and the province's economic viability as an independent state were heated but were thought in the end not to have increased the No vote. There was also argument about where a Yes vote would leave Quebec in relation to Canada's international commitments such as the North America Free Trade Agreement (NAFTA) and NATO.

After the failure of the second referendum, a Canadian Supreme Court opinion suggested that Quebec had no legal right to secede unilaterally, but that the rest of Canada would have a political obligation to negotiate that secession if a majority of Quebecers voted for it. There was much discussion about whether a margin of 50% of the vote plus one was big enough to be decisive.

This paper gives a brief overview of the history of the two referendums, showing that many of the controversies that developed during the Quebec campaigns are already being echoed in the run-up to the Scottish referendum.

## 1 Background

### *Quebec and the British Empire*

After the military campaign led until his death in 1759 by Major-General James Wolfe, Montreal was surrendered by France to British forces led by Jeffrey Amherst in 1760. New France was officially ceded to Great Britain by the Treaty of Paris, signed in 1763. In that year, a proclamation by George III set out the framework of the new British province, uniting three districts and redrawing the boundaries to put areas with English-speaking populations in English-speaking provinces. In 1774, an Act of Parliament restored French civil law for private disputes and guaranteed freedom of religion for Catholics. It also allowed Catholics to stand for public office. After the American War of Independence, which ended in 1782, many loyalists to the Crown fled the US and settled in what was then Quebec. Boundaries were then redrawn to put these settlers in English-speaking Upper Canada, later part of Ontario.

After the French defeat in Canada, the Catholic Church encouraged French speakers to step back from public life in Canada and remain socially separate from English speakers, hoping that this would help to preserve the separate culture and religion in French-speaking areas. This contributed to a marginalisation of Francophones, even in Quebec, where they were in a majority, allowing Anglophones to dominate business while the Francophones tried to preserve their essentially agrarian way of life.

After intermittent power struggles between colonists and the imperial authorities, there was a wave of rebellion against British rule in 1837 and 1838, involving both French- and English-speaking Canadians. The leadership of the French-speaking rebellion, known in Quebec as the *Guerre des patriotes*, issued a declaration that Quebec should secede from Canada. The rebellion was put down by the British Army assisted by loyalist colonists, who defeated the *patriote* forces at Saint Eustache near Montreal and Saint Charles near Quebec City, ransacking Saint Eustache and imposing martial law on Montreal.

Soon after, Lord Durham was dispatched by Lord Melbourne, then British Prime Minister, to report on the uprisings. In his report, he recommended unifying Upper Canada (Quebec before the addition of aboriginal lands) and Lower Canada and introducing government with the consent of the elected assembly. His plan to unify Upper and Lower Canada into the United Province of Canada was aimed largely at assimilating French-speaking Canadians in Upper Canada, whom he viewed as a people without a history or a culture, into the Anglophone Canada.<sup>1</sup> Lord Durham remains a hated figure in Quebec.

The present federal structure was largely set up in 1867, when the Dominion of Canada was formed from some of the various British colonies in North America. With dominion status came increased self-government, the creation of the office of Prime Minister and a federal structure that promised some autonomy for the provinces. This being the case, many Quebeckers welcomed confederation as an opportunity to nurture Quebec culture and joined the confederation at its inception, while other colonies such as British Columbia and Alberta joined later.

After the defeat of the *Patriotes* rebellion, the separatism idea remained dormant in Quebec for a century. This was a period of aggressive action by English-speaking Canadians to suppress French culture. In 1890, for example, Manitoba outlawed Catholic schools and teaching in French at secondary level. Even the teaching of French was made illegal in secondary schools. In Saskatchewan in 1930, teaching French was even banned outside

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<sup>1</sup> The Canadian Encyclopedia, [John George Lambton, 1st Earl of Durham](#)

school hours.<sup>2</sup> One of the results of this campaign against the French language in English-majority provinces was the abandonment of French-speaking minorities there by the majority-French province of Quebec. Quebecers could either work to bolster the independence of provinces or it could appeal to the Federal Government to intervene on behalf of French-speakers in English provinces. They chose the former option.

Polarisation between Quebec and the other provinces increased, with massive divisions opening up over the issue of conscription during both World Wars (the French opposed it and the English supported it). During the 1920s and 1930s, there were occasional mentions of separation among nationalist circles, but it was not until the late 1950s and early 1960s that the separatist movement re-emerged as a political force. Separatist and nationalist pressure increased during the 1960s, as the new Quebec nationalism took over from the old French Canadian nationalism. In 1966, the *Rassemblement pour l'Indépendance Nationale*, a left-wing group, and other separatist parties gained more than 9% of the vote in elections to the Quebec assembly.



### Terrorism

More radical groups also came to the fore in this period, particularly in the 1970 'October crisis', when the *Front de la Libération du Québec* (FLQ), which had perpetrated dozens of less serious acts in preceding years, kidnapped the British trade commissioner in Montreal, James Cross. The FLQ demanded the liberation of a number of convicted or detained FLQ

<sup>2</sup> Robert J Jackson, Doreen Jackson, *Politics in Canada*, 1997, p227

members and for the FLQ manifesto to be broadcast. The Quebec government offered safe passage abroad to the kidnappers if they released their hostage but, on the same day as the offer was made, another FLQ group kidnapped the Quebec Minister of Labour and Immigration. Quebec called in the Canadian Armed Forces and the federal government declared a state of emergency under the *War Measures Act*. Normal freedoms were suspended, the FLQ was banned and over 450 people, largely Quebecers, were arrested under emergency powers allowing detention without charge. Most of these were later released without ever being charged.

Later, the body of the Quebec minister was found in the boot of a car, and the group holding the British representative was eventually tracked down. James Cross was released in return for safe passage to Cuba for the kidnappers. The group that had taken the Quebec minister was also located and subsequently tried and convicted on charges of abduction and murder. The emergency powers lapsed in 1971. Some Quebec nationalists and civil libertarians criticised the federal government's response as excessive.

In the aftermath of the crisis, the Royal Canadian Mounted Police was involved in controversial activities in its campaign against the radical groups, so much so that two inquiries, one commissioned by the federal government and one by the Quebec government, looked into the events. Both inquiries found that the Mounted Police had indulged in illegal activities.

### ***Language wars***

As the tide of nationalism rose, it was often expressed in struggles about the French language and education. The education of immigrants in French schools was one of the battlegrounds, and the other was the content of commercial signs, the size and location of letters. Bill 101, the vehicle for the new provisions was challenged as contrary to the *Constitution Act 1867*. The Quebec government had initially insisted on French-only commercial signs, but both the Quebec Court of Appeal and the Federal Supreme Court intervened, finding that it was an infringement of the constitutional right to freedom of expression to ban English in shop signs. After long wrangling over the law, a less controversial version was passed in 1993 which just required French to appear alongside other languages in commercial signs in Quebec.

This did not settle the language question, however, and the Quebec government continued to tighten regulations concerning the use of French. In December 2012, the newly-elected PQ government of Pauline Marois introduced amendments to the province's French Language Charter that would have the effect of increasing the scope of regulations on the use of French to include smaller companies and strengthening the rules that steer pupils towards French- rather than English-speaking schools.<sup>3</sup>

### ***Relative decline?***

Quebec is the largest province in Canada by area and has the second largest population after Ontario, as well as the second largest economy. It is a low to middle-ranking province in terms of income per head, significantly poorer than Ontario, and the standard of living is markedly lower than that in Alberta, the hydrocarbon-rich western province whose economy has been growing strongly over the last few years.

The population of Quebec is growing more slowly than the Canadian population as a whole and the proportion of Canadians who speak French has gradually declined. In 1951 it was around 30% but by this had fallen to about 24% by 1997. As well as the higher population

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<sup>3</sup> ['PQ pitches tighter language restrictions to boost French'](#), *CBCNews*, 5 December 2012

growth of English-speaking provinces, the trend is due to the assimilation of Francophones in Anglophone provinces.

Along with a more slowly-growing population comes a more quickly-ageing one. The average age in Quebec is higher than in the rest of Canada.

## 2 1980 Referendum

### 2.1 The Parti Québécois is elected

In 1967, charismatic former member of the Quebec Liberal Party, René Lévesque, founded the *Mouvement Souveraineté-Association*, which became the *Parti Québécois* (PQ) in 1968. The PQ espoused a policy of independence for Quebec, and the popularity of separatism increased steadily from that point.

In the 1970 election, the PQ did well but failed to oust the Liberals. At the next Quebec election, after the 1970 crisis, the PQ increased its share again, to 30%, but still failed to dislodge the Liberal Party, which campaigned on the fears of extremism stoked by the crisis.<sup>4</sup> In the face of these difficulties, the PQ modified its policy to *étapisme*, a gradualist approach to independence: sovereignty for Quebec combined with close economic association with the rest of Canada, a policy that it called Sovereignty-Association. The PQ proposed a first referendum to approve starting negotiations on Sovereignty-Association and a second referendum to approve the outcome of those negotiations.

The PQ was put in power at the 1976 Quebec election with 41% of the vote and 71 of the 110 seats in the National Assembly, defeating the Quebec Liberal Party, which had been plagued by a series of scandals. The separatist policy was not the overwhelming theme of its election campaign, which concentrated at least as much on efficient government.

The first bill that the PQ tabled was a law strengthening the position of French as the sole official language of Quebec and establishing the Conseil Supérieur de la Langue Française. The PQ laid out its plans for sovereignty in 1979 in a White Paper entitled *Québec-Canada: A New Deal. The Québec Government Proposal for a New Partnership Between Equals: Sovereignty-Association*.<sup>5</sup>

### 2.2 Procedure

A referendum procedure had first been proposed for constitutional and political questions in Quebec in 1969, when a bill was debated but not passed by the National Assembly. The Parti Québécois, having been elected to power in Quebec in 1976 with the promise of a referendum at a later date, introduced the *Referendum Bill* in December of the following year. The *Referendum Act* received Royal Assent in June 1978.

The result of a vote conducted on the basis of Quebec's *Referendum Act* is not binding on the Quebec government. The *Referendum Bill* was drafted so as to be compatible with the Federal Constitution, so it could not impinge on federal powers.

The *Referendum Act* provides for a Referendum Council, composed of three provincial judges. The Council has the power to decide on technical and legal questions relating to the referendum. Two referendums may not be held on 'substantially' the same question during the term of one legislature and disputes over this are to be decided by the Referendum Council.

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<sup>4</sup> Robert J Jackson, Doreen Jackson, *Politics in Canada*, 1997, p230

<sup>5</sup> Government of Quebec, *Québec-Canada: A New Deal. The Québec Government Proposal for a New Partnership Between Equals: Sovereignty-Association*, November 1979

The 1980 Referendum on sovereignty association was held in accordance with the Quebec *Referendum Act* of 1978.<sup>6</sup> The Act provides for the government to call a referendum on a bill or any question approved by the Quebec National Assembly on a motion tabled by the Prime Minister. Debate on a referendum question is privileged and takes preference over all other assembly business except the debate on the inaugural message (the equivalent in Quebec of the Queen's Speech). The Act provides for Assembly Members to table amending motions.

The Act provides that the Quebec Government should set the date of a referendum, like a general election, in the form of a writ addressed to the Chief Electoral Officer. The Act as it read in 1980 provided that the writ could not be issued until at least 20 days had elapsed after the adoption of the resolution by the National Assembly authorizing the holding of the referendum.

Following the issuing of the writs, the campaign itself would last between 28 and 60 days. Polling day could be no more than 60 days following the issuance of the writ.<sup>7</sup>

### 2.3 The campaign

The Parti Québécois *New Deal* White Paper listed the many ways in which Quebecers had allegedly been mistreated by the English-speaking majority. Using visionary language, the White Paper said that it was time for the Quebec nation to make a choice:

There are crucial moments in the history of peoples as there are in the lives of individuals. Nothing is more natural. To live is indeed to choose, and there is no progress without movement, effort, change.<sup>8</sup>

The document went on to say that sovereignty was “the only road that can open up the horizon and guarantee us a free, proud and adult national existence”, and proposed ‘Sovereignty-Association’, a solution that envisaged declaring Quebec a sovereign nation and re-negotiating its relationship with the rest of Canada on the basis of two equal nations rather than as just another province among the ten that make up Canada.

Federalists countered that the prominent position of Quebecers in the federal government belied claims of marginalisation and domination. One English-speaker's history of the events says that the White Paper's account of “oppression and virtual emasculation of the Québécois reached the level of caricature.”<sup>9</sup>

The No camp accused the separatists of deliberate vagueness in what they were proposing, calculatedly down-playing the independence that was their ultimate goal, so as not to frighten off the voters. All of the English-speaking provinces refused to give prior assurance that they would enter into the proposed new economic association agreements with a sovereign Quebec.

The background of support for the PQ and for ‘Sovereignty-Association’ had been relatively stable and looked promising enough for the separatists. But in February 1980, the Liberal Pierre Trudeau won federal power from Joe Clark's Progressive Conservatives. With his mixed French and English background and personal popularity (including in Quebec), Trudeau made a much more formidable opponent to separatism than Clark, and immediately

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<sup>6</sup> A version of this Act, updated to January 2013, is available here: [Referendum Act](#). It has been amended extensively since 1978

<sup>7</sup> J Patrick Boyer, *Lawmaking by the People: Referendums and Plebiscites in Canada*, Butterworths, 1982

<sup>8</sup> [Québec-Canada: A New Deal. The Québec Government Proposal for a New Partnership Between Equals: Sovereignty-Association](#), p1

<sup>9</sup> Kenneth McNaught, *Penguin history of Canada*, 1996

took over the *de facto* leadership of the No campaign from Claude Ryan of the *Parti Libéral du Québec*.

Trudeau and the No campaign offered constitutional reform if there was a No vote and continually questioned the economic viability of an independent Quebec. They argued that separation could cost 200,000 jobs and said that it would mean a 19% tax increase to maintain the same level of government services.<sup>10</sup> The federalists cast doubt on whether Quebec would be able to pay pensions, targeting older voters whom they knew to be less likely to vote for separation.

Yes campaigners argued that if Quebec were to lose so many jobs that depended on trade with the rest of Canada, the rest of Canada would also lose a comparable number of jobs that depended on trade with Quebec. They said that the other provinces therefore had a clear interest in negotiating an agreement that would ensure the untroubled continuation of trade.

The Yes camp also pointed out that Quebec was a modern economy with enormous potential in agriculture and natural resources, including hydroelectric power and minerals, and that to suggest that it would not be viable was nonsense.

Another key argument was over the currency. The No camp argued that the remainder of Canada would not consent to a monetary union with an independent Quebec, and that Quebec would find it difficult simply to use the Canadian dollar; some very small and dependent countries have adopted the US dollar as their currency but it has not been done by anywhere as large as Quebec.

The No campaign also spent significant energy appealing to the non-Francophone minorities in Quebec, both immigrants and First Nation Canadians, assisted perhaps by the sometimes slightly hostile tone of the Yes campaign.

The debate on independence for Quebec was marked by some bitterness and division, both within Quebecker society and between Quebeckers and English-speaking Canadians. A Quebecker journalist travelling through the province in the run up to the 1980 referendum found that many refused to talk to a visitor about the matter, and that almost all who did would do so only on condition of anonymity.<sup>11</sup> The journalist talked about threats of violence by young Yes campaigners, and an atmosphere of fear among older Quebeckers. Nevertheless, in the event, there was little or no violence during or after the campaign.

There was also reported to be a gender divide, with women more likely to vote No and men tending more towards Yes. Again, financial uncertainty was thought to be behind this trend, with women said to be more worried about paying the bills.

## 2.4 The question

The Government of Québec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Québec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad - in other words, sovereignty - and at the same time to maintain with Canada an economic association including a common currency; no change in political status resulting from these negotiations will be effected without approval by the people through another referendum; on these terms, do you give the

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<sup>10</sup> John Fitzmaurice, *Quebec and Canada: The referendum of 20<sup>th</sup> May 1980 and its wider context*, University of Hull, 1981

<sup>11</sup> "The Ouis And Nons Of Quebec; The referendum pitted old versus young, husbands versus wives", *Washington Post*, 22 June 1980

Government of Québec the mandate to negotiate the proposed agreement between Québec and Canada?<sup>12</sup>

**2.5 The results**

**Quebec independence referendum 1980**

Yes to negotiations	1,478,200	40.50%
No to negotiations	2,171,913	59.50%

Voter turnout 84.30%

**2.6 After the vote**

During the 1980 referendum campaigns, politicians in the No camp had promised constitutional reforms if Quebeckers voted for unity. The offer of flexible federalism was one of the most important foundations of the federalists’ campaign; Canada was already a highly-devolved state, but after the 1980 vote, the then Prime Minister Pierre Trudeau said that further decentralising reforms should be made:

Now that we have reaffirmed our will to live together we must apply ourselves without delay to the task of rebuilding our home to conform to the present needs of the Canadian family.<sup>13</sup>

The PQ was re-elected in 1981, promising in its manifesto to put the independence question off for its full term, but subsequently its popularity began to decline. At the 1985 election the PQ, divided over its separation strategy and without René Lévesque, was ejected by Quebec voters in favour of a return to the Liberals.

Later in the 1980s the PQ began to revive under the new leadership of Jacques Parizeau, from the more radical separatist wing of the party. Support for separatism remained at about 40% during the 1980s.<sup>14</sup>

**3 The failure of the Meech Lake and Charlottetown Accords**

**3.1 Constitution patriated**

In 1982, the Canadian Constitution was ‘patriated’, or brought home. This constitution had formerly been embodied in Acts passed by the United Kingdom parliament and, later, by the Canadian parliament after Canada had been granted the right in 1949 to amend certain parts of its constitution. After 1982, Canada had full control over its constitution, embodied in a Canadian law, the *Constitution Act 1982*.

Far from addressing the grievances that had led to the holding of the 1980 referendum, many argued that the patriation reforms undermined some of the autonomy of the provinces in general and of Quebec in particular. Quebec had traditionally had some recognition of its special status, for example in the recognition of French civil law in the province in the 18<sup>th</sup> century. The 1982 Charter of Rights implied a reduction in Quebec’s legislative freedom of action and the reforms also formally abolished Quebec’s hitherto presumed right of veto over

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<sup>12</sup> Marianopolis College, [Quebec history](#)  
<sup>13</sup> “Quebec Chooses Canada”, *Washington Post*, 22 May 1980  
<sup>14</sup> The Canadian Encyclopedia, [Separatism](#)

major constitutional changes. The *New York Times* described the effect of the reforms as a “sharp loss of constitutional status”.<sup>15</sup>

The Quebec government, although it had no formal right of veto over the constitution,<sup>16</sup> refused to endorse the patriation, marking a low point in Quebec-federal relations. Many Quebec separatists criticised the 1982 patriation reform as being fundamentally unfavourable to Quebec’s aspirations. A Quebec historian argues that it was a centralising reform:

The 1982 reform is based on a centralising vision of Canada, which is largely incompatible with the federative and binational vision of Quebec. Far from recognising Quebec as a nation, people or distinct society, the 1982 reform starts from the principle that there is only one nation in Canada, composed of individuals enjoying the same constitutional rights from coast to coast.

He went on to criticise the mention of indigenous rights:

Silent on Quebec and on the existence of a majority French-speaking society, the 1982 reform nevertheless makes an exception to its individualist logic by recognising indigenous peoples with collective constitutional rights. What is more, the reform elevates multiculturalism to the level of rule of interpretation in the charter of rights. This concept, promoted since 1971 by the federal government in the guise of recognition of the contribution made by immigrants of other than British or French origin to Canadian society was also used by the federal government as a counterweight to the biculturalism advocated by the Federal Royal Commission and Quebec governments and intellectuals.<sup>17</sup>

Quebec presented five demands for constitutional change before it would back the patriated constitution. They were:

- the recognition of Quebec as a ‘distinct society’
- a veto over future constitutional amendments for all provinces
- increased provincial powers with respect to immigration
- greater rights to financial compensation for provinces opting out of federal programmes in areas of provincial jurisdiction
- a role for the provinces in the appointment of senators and Supreme Court judges.<sup>18</sup>

### ***Beau Risque***

After the election of Brian Mulroney as Canadian Prime Minister in 1984, the scene changed dramatically. Quebec Premier René Lévesque came to an agreement with the new Federal Government that came to be known as the Beau Risque: he abandoned his pursuit of separation and agreed to negotiations on constitutional reform. Jacques Parizeau opposed the Beau Risque strategy and resigned from Quebec Cabinet, taking some supporters with him, and temporarily withdrew from politics.

<sup>15</sup> ‘Drastic Remedies in Québec’, *New York Times*, 30 October 1995

<sup>16</sup> This was established in a Supreme Court judgment in 1982: *Re: Objection by Quebec to a Resolution to amend the Constitution*, [1982] 2 SCR 793. On the other hand, another Supreme Court judgment stated that the Federal Government did not have the right to patriate the constitution unilaterally: *Re: Resolution to amend the Constitution*, [1981] CanLII 25 (SCC), [1981] 1 S.C.R. 753

<sup>17</sup> Marc Chevrier, *Le fédéralisme canadien et l'autonomie du Québec : perspective historique*, 1996

<sup>18</sup> Irvin Studin, ‘Reflections on the Quebec question’, Institute for Research on Public Policy, *Policy Options*, February 2012

Brian Mulroney took the lead in negotiating with the provincial premiers proposals for constitutional change that would fulfil the Quebeckers' demands mentioned above and enhance the independence of all Canadian provinces at the same time as giving Quebec particular recognition as a 'distinct society'.

Meanwhile, at the Quebec election of December 1985, the Quebec Liberals under Robert Bourassa took power in Quebec.

After prolonged efforts, the changes proposed in the Meech Lake Accord, as it came to be known, did not happen. Provincial ratification was needed because there was a change in the constitution's amendment procedure and some of the English-speaking provinces did not in the end approve the accord. As the Meech Lake process failed, politicians from the federal Liberal and Progressive Conservative Parties left their parties and formed a new group, the Bloc Québécois. The group was led by Lucien Bouchard, who had been environment minister in Brian Mulroney's Progressive Conservative federal government.

With the constitutional change process stalled, there was an upsurge in separatist feeling in Quebec. The Quebec Liberal Party set up a committee under Jean Allaire, which produced a report entitled *Quebec: free to choose*, containing a new proposal to hold a referendum in Quebec by 1992. The referendum would either be on constitutional reform following the proposals in the report or, failing that, on Quebec sovereignty.<sup>19</sup>

Also after the failure of the Meech Lake Accord but separately from the Allaire Commission, the National Assembly of Quebec set up the *Bélanger-Campeau* Commission to look into political and constitutional arrangements of Quebec. The commission produced its report in 1991, recommending a referendum on sovereignty by 1992. The National Assembly later changed that recommendation to one for a referendum on either reform or sovereignty.<sup>20</sup>

The various reports at federal and provincial level led to a new accord being drawn up at Charlottetown, provincial capital of Prince Edward Island, in 1992. The accord envisaged constitutional reforms to address not only the Quebec question but also the position of indigenous peoples, the balance of powers between the federal and provincial governments, Senate reform and other matters. The accord proposed:

- recognition of Quebec as a distinct society
- reforming the Senate, including making any law that dealt with the Francophone culture subject to a double Senate majority: of all the Senators and of the French-speaking Senators
- reorganising the constituencies in the Canadian house of Commons to reflect more closely local populations and guaranteeing Quebec at least a quarter of all seats
- reforming the composition of the Supreme Court (another reform highly relevant to Quebec)
- provincial authority over forestry, mining, and other natural resources, and cultural policy
- removing the power of Lieutenant Governors (provincial deputies to the Governor General, the representative of the Crown in Canada) to refer proposed provincial legislation to the Federal Government for approval

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<sup>19</sup> [Constitutional activity from patriation to Charlottetown \(1980-1992\)](#), Library of the Canadian Parliament, Research Branch

<sup>20</sup> University of Alberta, Centre for Constitutional Studies, [Belanger-Campeau](#)

- limiting the power of the Federal Government to strike down legislation already passed by provinces
- reducing the influence over social policy wielded by the Federal Government placing conditions on its financial contributions
- approving the principle of Aboriginal self-government.<sup>21</sup>

Two referendums were held, one federally and one in Quebec. Both referendums resulted in rejection of the Charlottetown Accord.

### 3.2 Western alienation

Quebec was not the only province to resist the changes associated with the patriation of the constitution. The western provinces of Canada had a series of historic grievances against the political heartland, Quebec, Ontario and the federal government in Ottawa. Westerners had a tendency to resent the amount of tax they were paying in relation to services they received: the resource-rich states tended to think that they were putting in more than they were getting out. There were also trade rules that had been a long-standing source of grievance, with western Canadians seeing tariffs as a means of making them a captive market for central Canada's manufactured goods.

Western Canadians also tended to oppose bilingualism and any special status for Quebec and, as the tide of separatist feeling rose in Quebec in the 1970s and 1980s, feelings of western alienation also increased. The west's separation from the mainstream was demonstrated at the 1980 election, when the federal Liberal Party was returned to power. It captured no seats west of the province of Manitoba, leaving the west effectively disenfranchised at the federal level.

Increasing oil prices were an important driver of western frustrations, and Pierre Trudeau's National Energy Programme, a plan introduced in 1980 which levied a special tax on oil revenues and was intended to keep the oil price paid in the central provinces, was highly unpopular in the west, and especially in Alberta, where most of Canada's hydrocarbon resources are located. Not only did westerners feel that the programme took resources away from them, they also considered the programme an intrusion onto the provinces' competences, which had traditionally included natural resource questions. A bumper sticker in the 1980s read 'Let the eastern bastards freeze in the dark'.

A number of separatist or regionalist parties were set up in the early 1980s, including the Western Canadian Federation and the Western Canada Concept. Another, the Reform Party of Preston Manning, did well enough to gain 60 seats in the 1997 election, all from the west, and become the official opposition in the House of Commons.<sup>22</sup>

## 4 The 1995 referendum

In the 1994 Quebec election, the voters returned the PQ to power with a majority in the Assembly under the leadership of Jacques Parizeau, whose campaign had offered an undertaking to hold a referendum in the first year. Support for separation stood at about 40% in 1994.

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<sup>21</sup> [The Charlottetown Accord](#), *The Canadian Encyclopaedia*

<sup>22</sup> Robert J Jackson and Doreen Jackson, *Politics in Canada*, 1997, p255

#### 4.1 Procedure leading up to the 1995 referendum

The 1995 referendum was ushered in by an agreement between the pro-independence Quebecer parties: *Text of the Agreement Between the Parti Québécois, the Bloc Québécois and the Action Démocratique du Québec*. Subsequently, *Bill 1, an Act respecting the future of Québec*, was drawn up by the new Parti Québécois government of Jacques Parizeau.<sup>23</sup> A copy of the Bill was sent to every home in Quebec.

The Bill contained a declaration of the sovereignty of Quebec in its preamble, which began with a rousing call:

The time has come to reap the fields of history. The time has come at last to harvest what has been sown for us by four hundred years of men and women and courage, rooted in the soil and now returned to it. The time has come for us, tomorrow's ancestors, to make ready for our descendants harvests that are worthy of the labours of the past. May our toil be worthy of them, may they gather us together at last.<sup>24</sup>

The preamble concluded: "We, the people of Québec, through our National Assembly, proclaim: Québec is a sovereign country."<sup>25</sup> The Bill was debated but not passed, because the government planned to wait until the referendum had been held and a Yes vote obtained, when the Bill would be passed and sovereignty declared.

The government was required to state in the writ when the referendum was to be held. By the time of the 1995 referendum, the *Referendum Act*, under whose provisions the referendum had to be held, had been amended somewhat since it was last used. By 1995, the Act provided that the writ could not be issued until at least 18 days following the adoption of the referendum resolution by the National Assembly. This time allowed the Director General of Elections an opportunity to enumerate electors before the issuance of the referendum writ.

A writ for a general election voided any writ for a referendum, meaning that holding a referendum and a general election at the same time (an idea that was floated at one stage) would have conflicted with the provisions of the *Referendum Act*. Referendum expenses were regulated by the Act and it also provided for recounts in the event of disputes, but not for a re-run of the referendum.<sup>26</sup>

The victory margin was a simple majority. This was in itself contentious. Many constitutions require a more substantial majority including multiple requirements for majorities to be reformed. The 1979 Scottish referendum did not result in approval for Scottish devolution because of the provision, added during the passage of the *Scotland Bill 1977-78* through the Westminster Parliament, that 40% of the Scottish electorate would need to vote in favour.

After the defeat of the 1980 referendum, and having beaten the Quebec Liberal Party by the finest of margins in terms of votes cast at the preceding Quebec general election, the Parti Québécois was perhaps not confident of achieving anything more than a simple majority and decided to set the bar as low as possible.

The official campaign leaders were Jacques Parizeau for the Parti Québécois and Daniel Johnson, leader of the Quebec Liberal Party and Leader of the Opposition in the Quebec National Assembly.

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<sup>23</sup> The full text of the *Act Respecting the Future of Quebec* is available on the Simon Fraser University website. The political agreement between the parties is annexed to the Bill.

<sup>24</sup> *Bill 1, an Act Respecting the Future of Quebec, Preamble*

<sup>25</sup> *Bill 1, an Act Respecting the Future of Quebec, Preamble*

<sup>26</sup> Patrick Boyer, *Direct Democracy in Canada: The history and future of referendums*, 1992, p276-7

## 4.2 The campaign

### *The Yes campaign*

The Yes campaign's overall strategy was:

- to appeal to Quebecers' feelings of national solidarity
- to stress that the existing federal setup was inflexible and disadvantageous to Quebec
- to show that sovereignty would produce gains
- to convince voters that the proposed partnership with the rest of Canada would protect against economic disruption and political isolation.

A nuanced approach to independence, one that stressed a continuing close relationship with the rest of Canada and stability in Quebec's international relations was an essential element of the 1995 campaign from the start. But this 'soft' approach was not new in 1995. In the 1980 vote too, the sovereigntists' campaign had envisaged proceeding by gradual steps, and as far back as the 1960s, the concept of 'Sovereignty-Association' had been the basis of Quebec separatism.

The extent to which the Yes campaign stressed continuity was, however, hotly debated by both the Yes and No campaigns. Initially, Jacques Parizeau, leader of the Parti Québécois government of Quebec, had planned to pass a sovereignty law and then ask Quebecers in a referendum: "Are you in favour of the Act passed by the National Assembly declaring the sovereignty of Quebec? Yes or No."

The emergence as a leading figure in the Yes camp of Lucien Bouchard, leader of the Bloc Québécois in the federal parliament, led to this plan being questioned. Bouchard thought that Parizeau's proposals would alienate 'soft' nationalists and assist the federalists in campaigning on scare stories about the disruption that would ensue from separation. After the interventions of Bouchard and the other Quebec nationalist party, *Action Démocratique du Québec*, Parizeau agreed to change the question to one that offered economic and political partnership with the rest of Canada. Debates about the question significantly delayed agreement on the final wording.

The Quebec government introduced a Bill, entitled *Bill 1 an Act Respecting the Future of Quebec*, embodying the new softer approach to the referendum along with the tripartite agreement behind it.

Not only did Bill 1 promise to negotiate economic association with the rest of Canada, it also made a number of other assurances that were intended to minimise the concerns of waverers worried that separation from Canada would entail disruption and insecurity. The Bill said that:

- Quebecers would be able to hold Quebec citizenship concurrently with Canadian citizenship
- Quebec would use the Canadian dollar
- Quebec would negotiate a fair share of Canada's debts and assets

- Quebec would set about joining the United Nations, NATO, NORAD<sup>27</sup> and the WTO
- Quebec would assume the obligations and enjoy the rights set out in all Canadian treaties. In the words of the Bill:

In accordance with the rules of international law, Québec shall assume the obligations and enjoy the rights set forth in the relevant treaties and international conventions and agreements to which Canada or Québec is a party on the date on which Québec becomes a sovereign country, in particular in the North American Free Trade Agreement.<sup>28</sup>

As the new, softer strategy gained hold, the National Commission on the Future of Quebec published its report, which suggested that the Bill should be amended to include the offer that Quebec and the rest of Canada should set up joint political institutions, perhaps modelled on those of the European Union, to include a Council, a parliamentary assembly and a tribunal. Lucien Bouchard agreed to the proposal. The new strategy was sealed in an agreement signed in June 1995 by the sovereigntist forces. The agreement set out to realise Quebeckers' desire to:

maintain equitable and flexible ties with our Canadian neighbours so that we can manage our common economic space together, particularly by mean of join institutions, including institutions of a political nature.<sup>29</sup>

The sovereigntists' economic studies had failed to gain much attention in Canada, but it seemed that the overall notion that both sides would protect economic relations and want to minimise disruption was gaining some traction, although one Quebec newspaper mocked that Bouchard was suggesting a "unilateral declaration of association".<sup>30</sup>

Some sovereigntist campaigners suggested, too, that Quebeckers would continue to use Canadian passports. However this seems unlikely, since Canadian passports, emblazoned with Royal insignia, would remain a potent symbol that Quebec was indeed *not* an equal partner with English-speaking Canada. The question of possible dual nationality remained unresolved.

The national debt would be in the name of the continuing state of Canada; Canada would be responsible for it. Quebec would have to negotiate a fair share with the continuing Canada, a discussion that would be far from straightforward.

### ***The No campaign***

The No campaign was at the beginning of campaigning relatively confident of victory. The result in the previous referendum, in 1987, added to more recent opinion polling evidence, suggested that the referendum was unlikely to succeed. Part of the result of this confidence was a strategy to put the onus on the Yes campaign to show that what they were proposing was of benefit to Quebeckers. Secondly, they wanted to appeal to voters' attachment to Canada. Thirdly, the No campaign stressed that separation would lead to disruption and uncertainty. Lastly, they offered constitutional flexibility, to offer Quebec some of the reforms it wanted, after a No vote.

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<sup>27</sup> NORAD is the North American Aerospace Defence Command agreement that provides early warning protection over the whole of the US and Canada

<sup>28</sup> *Bill 1, an Act Respecting the Future of Quebec*, Clauses 13-17

<sup>29</sup> Quoted in Robert A Young, *The Struggle for Quebec*, 1999, p20

<sup>30</sup> Editor of *L'Actualité*, quoted in Robert A Young, *The Struggle for Quebec*, 1999, p20

Led by federal Prime Minister Jean Chrétien of the Liberal Party, the No campaign complained that the Yes campaign's approach of offering sovereignty and association with Canada was in fact not clear enough. Federalists said that the word 'country' (as in 'sovereign country') had been left out intentionally to confuse voters. They also said that the process would inevitably lead to separation. They also complained that the wording of the question and particularly the phrase 'the agreement signed on June 12, 1995' might imply that the new economic and political partnership had somehow already been secured. Jean Chrétien was blunt: "It's a mirage. It is still a proposition for separation, but they don't have the guts to say they are separatists."<sup>31</sup>

Opinion research appeared to bear out the federalists' claims about the question wording. A poll conducted three weeks before the vote found that 28% of the voters who had not yet made up their minds believed that a Yes vote would in fact simply mean negotiating a better deal within the federal system.<sup>32</sup>

There were many other indications of the importance of the wording. Polling suggested that some 53% of those who supported sovereignty thought that it did not mean separating from the rest of Canada.<sup>33</sup> Research also found that if the word 'sovereignty' was used in a question rather than 'independence', the positive response was some 5 percentage points higher. Even more striking differences were shown: if the polling question was reversed and respondents were asked whether they wished to stay in Canada, 59% said Yes; and a poll in 1994 suggested that 71% of sovereigntists wanted to remain part of the Canadian federation.

In September 1995, a poll suggested that the public was still confused about what was being offered. 62% of Quebeckers thought that they would be using the Canadian dollar after a Yes vote; 45% thought that they would be able to use Canadian passports and 69% thought that there would be an economic union with the rest of Canada.<sup>34</sup> None of these outcomes was assured and all would depend on the progress of negotiations with the rest of Canada after a yes vote.

The polling evidence that a straight 'in/out' referendum would be defeated by something like a 60/40 margin was widespread, and this was the backdrop to the sovereigntists' decision to present an option of a renegotiated relationship with the rest of Canada rather than separation.

The reaction of the rest of Canada to the Yes campaign's proposals for association was a sensitive matter. Federalists were aware that aggressive campaigning against Quebec sovereignty could increase divisions between Quebeckers and Canadians from other provinces and push waverers towards the sovereigntists. With that in mind, the federalists left a lot of the campaigning to their colleagues within Quebec.

Federalists argued that the Yes campaigns undertakings, such as those on using the Canadian dollar and joining international organisations, were, to a greater or lesser extent, dependent on the agreement of the rest of Canada, on other countries or on international organisations. The assertion that Canada would immediately assume the obligations and rights of all Canada's treaties and conventions was particularly controversial (see section below on legal questions). The US, Canada and Mexico all stated that Quebec should not assume that entry into NAFTA would be automatic.

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<sup>31</sup> John E Trent, *A practical guide to the 1995 Quebec referendum*, Dialogue Canada, 1995

<sup>32</sup> Canadahistory.com

<sup>33</sup> John E Trent, *A practical guide to the 1995 Quebec referendum*, Dialogue Canada, 1995

<sup>34</sup> SOM and Environics survey quoted in Robert A Young, *The Struggle for Quebec*, 1999, p32

The English-speaking provinces sought to cast doubt on the likelihood, or at least the simplicity, of granting Quebec the new relationship the PQ was proffering (for example whether a sovereign Quebec could share the Canadian dollar). The No campaign *wanted* Quebecers to fear possible instability after a Yes vote and therefore to vote No. But No campaigners tried to do this without stoking up the atmosphere of hostility that would favour a Yes vote. They did not want to destroy the image of a Canada built on respect and accommodation, a crucial part of their campaign.

At the same time as banning polarising rhetoric from the premiers of English-speaking provinces, the Federal Government on behalf of the No campaign avoided sharp cuts in federal transfers to the provinces and maintained the block grant system that was slightly favourable to Quebec. The Federal Government also scaled back proposals to reform social policy.

The No campaign cast doubt on the desirability as well as the likelihood of a political and economic partnership along the lines suggested by the Yes campaign, saying it would impose another layer of government. Jean Chretien said in his first major speech for the campaign:

The proposal for a political partnership flies in the face of the most elementary good sense... It would be rejected because it would impose another level of government in Canada, with equal representation even though Canada is three times the size of Quebec, and a right of veto that would totally paralyse both these broken countries."<sup>35</sup>

### **Constitutional reform offer**

At the last minute of the campaign, under pressure from the Quebecers within the team, the No side decided to set out a clearer offer of constitutional reform after a No vote. On 25 October in a televised address, Jean Chretien said that Canada should accept Quebec's basic demands, short of sovereignty:

We must recognise that Quebec's language, its culture and institutions make it a distinct society. And no constitutional change that affects the powers of Quebec should ever be made without the consent of Quebecers. And that all governments – federal and provincial – must respond to the desire of Canadians – everywhere – for greater decentralisation.<sup>36</sup>

### **Yes side makes progress**

As the referendum approached, it became apparent from opinion polls that the Yes campaign was beginning to make progress. There were some indications of a rise in tactical voting, where Quebecers thought that sovereignty would be rejected but that a strong Yes showing would give Quebec a stronger hand in constitutional amendment negotiations after the vote, with as many as a third of those intending to vote Yes supporting this reasoning.<sup>37</sup> In October, one of the last opinion polls put the Yes campaign slightly ahead.

### **Montreal rally**

At the last moment federalists, worried that the Yes campaign would win, took action by proposing some concrete constitutional reforms after a No vote and mounting a huge pro-Canada rally in Montreal's Place du Canada. Well over 100,000 people gathered, many encouraged by their employers, in a final attempt to halt the momentum of the Yes side. Depending on your viewpoint, the rally could be seen as an "outpouring of love" or a "tawdry

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<sup>35</sup> Robert A Young, *The Struggle for Quebec*, 1999, p44

<sup>36</sup> 'The Referendum; Addressing the nation; Chretien: why destroy Canada?', *Globe and Mail*, 26 October 1995

<sup>37</sup> Robert A Young, *The Struggle for Quebec*, 1999, p32

closing-time seduction,"<sup>38</sup> but it may have had the effect of persuading enough voters to go for No.

### 4.3 More campaign themes

#### *The electoral register*

There was controversy too about electoral registration. The Quebec government introduced a reform to electoral registration procedures in 1995 that was intended to save money and improve the reliability of the electoral register. Until the reform, Canada had prepared the register only when an election was imminent. Bill 40 tabled in the National Assembly provided for a permanent electronic register.

Doubts about the new system arose because of the timing of the change, just before the referendum, which was known to be closely balanced. The new system put more emphasis on individuals to register themselves, and some federalists suspected the Quebec government of intentionally making it less likely that recent immigrants would get themselves registered. Comparisons were made with the United States, where only 50 – 60% of potential voters were thought to be registered, compared with Canada under the old system, where 90% of voters were registered.<sup>39</sup>

#### *Economic disparities*

One of the most important themes of the separatism debate was the divide in wealth between the English-speaking provinces and Quebec. The standard of living in Quebec was lower than that in the larger English provinces. While the gap had been closing before the 1980 referendum, more recently it had been widening again, with some projections showing Quebec becoming the poorest province within a few decades and overtaken by such isolated provinces as Labrador, which had traditionally been the most deprived.

Albertans and other Canadians in the west of the country had seen their incomes grow much more quickly, partly because of the energy industry (Montreal was declared Canada's "capital of poverty" in 2000).<sup>40</sup> Quebec's relatively poor performance was attributed by some Yes campaigners to 'domination' by English-speaking provinces.

As well as between provinces, there were economic disparities within Quebec, with Anglophones traditionally better off than Francophones. This gap had virtually closed by 1980, however. The improving trend for Francophones seemed to peter out though. By 2012 the average income of Anglophone Quebecers was still higher than that of Francophones, although Anglophone income distribution was more unequal and Anglophones were more likely to be unemployed than Francophones<sup>41</sup>.

#### *Economic cost of separation*

The effect of separation on the Quebec economy and what currency an independent Quebec would use were two of the main questions during the campaign. The No campaign did not suggest that Quebec was economically unviable outside Canada, as it was clear that Quebec had considerable economic resources. The argument of the No side centred on the cost of uncertainty and disruption caused by the whole referendum process and the possible separation process. Federalists also argued that the smaller Quebec economy would be intrinsically less stable and more vulnerable to outside forces, and that Quebec would lack weight in international fora, in trade negotiations, for example.

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<sup>38</sup> André Picard, 'A nation united by a seat sale', *Globe and Mail*, 26 October 1995, quoted in Robert A Young, *The Struggle for Quebec*, 1999, p36

<sup>39</sup> Louis Lavoie, 'A Permanent Voters' List for Elections', *Canadian Parliamentary Review*, Vol 18, no 3, 1995

<sup>40</sup> 'Montreal "poverty capital of Canada"', *CBC news*, 17 April 2000

<sup>41</sup> *The Socioeconomic Status of Anglophones in Québec*, Institut National de Santé du Québec, May 2012

Trade with the rest of Canada and with the United States was the lifeblood of the Quebec economy and Canada's membership of the General Agreement on Tariffs and Trade (GATT, predecessor to the World Trade Organisation) and the Canada-US Free Trade Agreement, (predecessor to NAFTA), were the guarantors of access to those markets.

The debate in the run-up to the referendum centred on whether Quebec, as a newly sovereign state, would automatically inherit the rights and obligations entailed in membership of those agreements or whether Quebec would have a 'clean slate' and have to renegotiate the terms of trade agreements with the other parties.

The Commission Nationale sur l'Avenir du Quebec (National Commission on the Future of Quebec) was set up by the Parti Québécois after its election in 1994. It commissioned a number of studies to look at the likely impact of sovereignty on Quebec's economy. The studies concluded that the terms of Canada's important trade agreements could continue to apply to Quebec, while conceding that, legally, it was not clear that they had to (see section below on treaties and international obligations for further discussion of this question). They argued that Quebec could inherit the provisions of the Canada-US Free Trade Agreement if the US and Canada were agreeable. The studies also stressed the importance of maintaining a completely free common market with the rest of Canada, including the almost complete free movement of people, a common currency and a single banking system. The studies considered the creation of a Quebec currency but concluded that that would not add a great deal to Quebec's financial independence, since the Quebec currency would probably be tied to the US dollar or the Canadian dollar. In any event, the studies concluded, any attempt to pursue a more expansionary monetary policy would be punished by the financial markets.

The question of Quebec's participation in monetary policy-making in the event of a common currency was also discussed. A supra-national Quebec-Canada Council was proposed to replace the Board of Directors and Executive Committee of the Bank of Canada. It was also suggested that a formula would be needed to calculate the sharing out of Bank of Canada profits. The proposed system was likened to that in the United States, where the Federal Reserve has a network of regional reserve banks. The studies acknowledged that Canada might not be willing to enter into such arrangements, and went on to consider the costs of a Quebec currency.<sup>42</sup>

Critics claimed that much of the Yes campaign's economic analysis was over-optimistic. Patrick Grady, coming from a federalist angle, argued that the assumption that economic partners would fully cooperate with Quebec was not entirely realistic:

The studies take a consistently optimistic approach. In the chapters on trade relations, for example, it is taken as a matter of course that trade relations between Quebec and the rest of Canada and the United States would be unaffected by separation. Canada is expected to be willing to agree a common market with Quebec. The United States is portrayed as ready to conclude a free trade agreement with Quebec immediately. The studies do not mention the possibility that hard feelings engendered by the separation could make re-establishment of trade between Quebec and Canada difficult. Nor do they mention that trade negotiations are time consuming and that the United States may have other priorities than negotiating a free trade agreement with Quebec and that when it did it would most likely want to negotiate changes that would be disadvantageous to Quebec. The costs of negotiations with both Canada and the United States are completely ignored.<sup>43</sup>

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<sup>42</sup> Patrick Grady, *The economic consequences of Quebec sovereignty*, Fraser Institute, 1991

<sup>43</sup> Patrick Grady, *The economic consequences of Quebec sovereignty*, Fraser Institute, 1991, p42

On the split-up of Czechoslovakia in 1993, Slovakia at first used the same currency as the Czech Republic, but capital flight forced the Slovaks in the end to create a new one. Federalists argued that Quebec would for the same reasons be forced to create its own currency.

The Yes campaign was probably quite successful in countering the economic disruption arguments of the No side. The argument that the rest of Canada would see where its interests lay after separation – in avoiding disruption – was widely accepted. One English-speaking observer suggested that national stereotypes helped support this view: “The separatists portray ‘les Anglais’ as desiccated calculating machines, ready to cut deals the day after the destruction of their country.”<sup>44</sup>

Worries about economic disruption are widely said to have affected the way that Quebeckers voted. Older voters and women were more likely to reject sovereignty, many of them worried about the costs and financial instability that separation might bring. Quebec, along with Ontario, was running a fiscal deficit and the need to finance this independently could have raised the interest rate paid by a Quebec government to borrow on the financial markets. At the same time taxes might have had to rise to reduce the deficit.

As the referendum approached, financial markets began to react negatively to the uncertainty. From 1994 onwards, interest rates paid by Canada to borrow on the financial markets began to go up relative to US government borrowing. Quebec’s budget deficit was one of the concerns in the markets. A London-based fund manager commented in 1995 that lending money to a sovereign Quebec was not attractive:

[Quebec’s debt is] of doubtful value – uncertain government, uncertain direction, not a member of international organisations, it’s got a lot of debt, it’s arguing about how much to assume of Federal Government debt. Why should I want to get in a credit like that? It would be absolute nonsense for our kind of funds.<sup>45</sup>

On 20<sup>th</sup> October, just before the poll, an opinion survey showed the Yes side marginally ahead. Afterwards, the Canadian dollar lost 1.6% of its value in less than a week.

### *Aboriginal rights*

The rights of Canada’s ‘First Nations’, the Inuit, the Cree, the Huron and other groups, became highly controversial in the run-up to the 1995 referendum.

Part of the territory of Quebec had been transferred by Canada to Quebec in the early years of the 20<sup>th</sup> century, with certain rights guaranteed by Canadian legislation for the aboriginal peoples who lived on the land. Questions arose as to how those rights would be transferred into Québécois legislation in the event of separation.

Indigenous groups had themselves come to agreements with the Federal Government on a number of issues, for example, on the construction of a hydroelectric project at James Bay, which was intended to be built on land where indigenous peoples had acquired rights.

The draft bill calling for a unilateral declaration of sovereignty, published in 1994, affirmed that a new Quebec constitution would recognize the existing constitutional rights of aboriginal

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<sup>44</sup> Norman Webster, ‘C’mon Canada it’s time to do something. NOW’, *Montreal Gazette*, 21 October 1995, quoted in Robert A Young, *The battle for Quebec*, 1999, p49

<sup>45</sup> ‘Funds would shun Quebec debt International money managers say credit risk too high’, *Globe and Mail*, 26 October 1995, quoted in Robert A Young, *The battle for Quebec*, 1999, p63

nations, in a manner "consistent with the territorial integrity of Quebec."<sup>46</sup> (The same clause guaranteed the recognition and protection of the culture of English-speaking Quebecers.)

The Crees of Quebec disagreed with this, saying that if the Quebecers had the right to secede from Canada, the Crees had the right to keep their territory in Canada. They said that they are a nation under international law and that Quebec had no right to incorporate their lands into an independent Quebec.

Both the Crees and the Inuit conducted their own referendums in which overwhelming majorities opposed their traditional territories being incorporated unilaterally into an independent Quebec; other groups also wanted to remain part of Canada. The Parti Québécois and other Quebec separatists rejected the notion that the aboriginal groups had the same right to self-determination as the Quebecers.

These are contentious questions in international law, which the Canadian Parliamentary research paper referred to below discusses in detail.<sup>47</sup>

### *Xenophobia*

Campaigners for a No vote often said that the Quebec separatists were guilty of xenophobia or at least that the independence referendum would only encourage non-French speakers or non-white Quebecers to feel excluded. When Lucien Bouchard, the *de facto* leader of the Yes campaign, made comments about Quebec's low birth rate, he stirred up a storm of criticism:

Do you think it makes sense that we have so few children in Quebec? We're one of the white races that has the least children. That doesn't make sense. It means we haven't resolved our family problems.<sup>48</sup>

Federal Prime Minister Jean Chrétien mocked Bouchard in Parliament:

In order to be a good Quebecer, you have to be white rather than coloured, you certainly have to speak French rather than English, and you definitely have to be a separatist.<sup>49</sup>

Some women's advocates also complained at the notion that they should have more children for the sake of the nation.

The official policy of the separatist movement was that nationality would be based on place of birth and residence and not on ethnic background, and that minority rights would be fully protected in an independent Quebec state. The old guard of the independence movement is reported to have been more xenophobic than the younger generation.

### *Defence*

Defence policy hardly arose in the 1980 independence campaign, when the Cold War was still in full swing, but became a significant issue in the 1995 campaign. The Quebec separatists wanted to maintain overall Canadian strategy but change the emphasis of Quebec's defence policy. The Parti Québécois prepared legislation for enactment if an independence referendum was won, and the draft contained a statement on defence policy:

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<sup>46</sup> [Act Respecting the Future of Quebec](#), Clause 8

<sup>47</sup> [Aboriginal peoples and the 1995 Quebec referendum: a survey of the issues](#), 1996, Parliamentary Information and Research Service, Parliament of Canada

<sup>48</sup> "Quebecker Damages Separatist Cause With Remark on Low Province Birth rate", *Washington Post*, 18 October 1995

<sup>49</sup> *Ibid.*

Quebec will maintain forces proportional to its size and needs...and will assume responsibilities in collective security and defense through existing international organizations.<sup>50</sup>

Separatists wanted to maintain Quebec's membership of NATO and NORAD, the bi-national air defence organisation with the US. But an independent Quebec would have sought to re-orientate NATO towards UN-authorized operations and would have reduced expenditure on defence, re-directing the money towards support of international organisations. The Bloc Québécois said that it would dismantle two F-18 squadrons dedicated to NATO duty and end the financial contributions to the AWACS system. The Bloc opposed any participation in missile defence systems.

There was much discussion about whether the other members of these organisations would happily invite Quebec to become a new member. In NORAD, particularly, there was concern that the separate NORAD membership of Quebec was not really needed and that the US might resist it. These questions are discussed in more detail in the Hyppia paper, cited below.<sup>51</sup>

After separation, the Quebec sovereigntists wanted to keep close relationships with Canada in defence. A joint document from the sovereigntist parties suggested that Canada and Quebec could even act jointly in some areas, proposing "joint participation in peacekeeping operations or a coordinated participation in NATO and NORAD."<sup>52</sup>

The cost of establishing an independent military force was investigated by the Canadian Ministry of Defence. In a memo, which emerged in 1999, Canadian defence officials (perhaps resistant to Quebec independence) said that to develop a force with full capabilities would be very expensive:

A small military force capable of responding only to domestic situations would be moderately costly to develop. [A multi-purpose combat force] able to meet the challenges to Quebec's security at home and abroad and [participate in NATO, NORAD and UN operations] would be very costly to develop.<sup>53</sup>

The separation of Quebec and Canada would have had other consequences: independence would have left Quebec and the rest of Canada with unbalanced defence industries that would be unsustainable if deprived of the relationships between the parts of Canada and with the United States. For example, most of the Canadian Army's ammunition is manufactured in Quebec and Canada would have to continue buying that ammunition for the industry to survive.

#### 4.4 Timing of the referendum

While Jacques Parizeau had always stated that the referendum would be held in 1995, there was some pressure to change the date. Some in the Yes campaign were worried that they were heading for defeat and urged the PQ government to postpone the vote until polling figures improved. In the end, the *virage* associated with Lucien Bouchard's takeover of the campaign delayed the vote, and the polling figures did indeed show an increase for the Yes campaign as the referendum day neared.

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<sup>50</sup> Quoted in Dwight N Mason, "The Foreign and Defense Policies of an Independent Quebec", Woodrow Wilson International Centre for Scholars, Canada Institute, January 2006

<sup>51</sup> Remi Hyppia, "Independent Quebec in NORAD and NATO: a long and winding road?", *American Review of Canadian Studies*, Spring 1997

<sup>52</sup> Quoted in Remi Hyppia, "Independent Quebec in NORAD and NATO: a long and winding road?", *American Review of Canadian Studies*, Spring 1997

<sup>53</sup> "Quebec army would be costly: memos", *Montreal Gazette*, 18 January 1999

#### 4.5 The question

Do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new Economic and Political partnership, within the scope of the Bill respecting the future of Quebec and of the agreement signed on June 12, 1995?<sup>54</sup>

#### 4.6 Results

##### Quebec independence referendum 1995

Yes	2,308,360;	49.42%
No	2,362,648;	50.58%
Voter turnout		93.52%

It is impossible to say what stopped the steady rise in the intention to vote Yes. If less than 30,000 Quebecers had voted yes rather than No, Canada as we know it would have ceased to exist. Unity rallies such as the one in Montreal may have had an effect. The Federalists had at the last minute made a change of tack to offer greater constitutional flexibility. The weather was cold and gloomy on the day of the referendum, which may have discouraged voters from choosing change.

Economic arguments and the proposed partnership with the rest of Canada were central. Fear of economic disruption and political isolation were perhaps the main obstacle to voting Yes. Polls had shown that voters were much more likely to decide in favour if they were confident that the association with the rest of Canada could be negotiated successfully, whereas without the association with the rest of Canada, sovereignty would be decisively rejected.<sup>55</sup>

### 5 After the 1995 referendum

After the campaign, Pierre Trudeau (who had the political leadership of the No campaign in 1980) showed that feelings were still running high. He wrote that Bouchard, the *de facto* leader of the 1995 Yes campaign, had misled Canadians:

I accuse Lucien Bouchard of having misled the population of Quebec during last October's referendum campaign. By distorting the political history of his province and of his county, by spreading discord among its citizens with his demagogic rhetoric and by preaching contempt for those Canadians who do not share his views Lucien Bouchard went beyond the limits of honest and democratic debate.<sup>56</sup>

The night of the declaration of the result, Montreal police reported clashes, looting and arson but the following day, the city was calm.<sup>57</sup>

As had happened after the 1980 referendum, the Chrétien government proposed some constitutional reforms after the failure of the 1995 Yes campaign. He said "I understand your

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<sup>54</sup> Marianopolis College, [The 1995 Referendum](#)

<sup>55</sup> SOM-Radio Canada poll, late September 1995, quoted in Robert A Young, *The Struggle for Quebec*, 1999, p41

<sup>56</sup> P E Trudeau, *Against the Current, selected writings 1939-1996*, 1996

<sup>57</sup> 'Quebec vote is 'a wake up call'', *CNN*, 31 October 1995

deep desire for change. We must now seek innovative solutions."<sup>58</sup> However, very little constitutional change in fact took place.

### ***A Canada-wide referendum?***

The question re-emerged in 1996 as to whether the whole of Canada should have a say on the independence or otherwise of Quebec. Jean Chrétien's Liberal government raised the prospect of a national referendum on Quebec, and then backed away from the idea. An early general election with Quebec as the main theme was also suggested as a means of settling the question.

A motion was passed in the Canadian House of Commons in December 1995 recognising Quebec's status as a distinct society within Canada, and in February of the next year, the Act granting a regional veto on constitutional amendments received Royal Assent, but the moves did not seem to please either side. The general picture was one of confusion and division in the government about how to take Canada forward.

Another idea that did not go away was the prospect of the Inuit and other aboriginal nations taking a large chunk of Quebec territory with them to remain part of Canada. Some anti-secessionists thought this was an unwise provocation that could threaten Canada's integrity whatever the outcome of the Quebec debate.

After the failure of the Yes camp in the 1995 election, the then Quebec premier Jacques Parizeau blamed the defeat on "money and the ethnic vote." He went on: "We shall reap our revenge."<sup>59</sup> (The sentiments were not new. In 1994, Bernard Landry, Parizeau's deputy had said "it is not healthy that democracy in Montreal is at the complete mercy of the vote of ethnic communities."<sup>60</sup>

### ***Electoral fraud***

An independent report published in 1996 by McGill University suggested that there had been fraud in the 1995 referendum, with ballots marked No being rejected in disproportionately high numbers in those polling stations where the No vote was gaining ground. A later official report by Director General of Elections Québec, also published in 1996, found that there had not been any plan at provincial level to implement systematic fraud, although it did report irregularities in two ridings at the initiative of individual delegates of the Yes campaign.<sup>61</sup> Supporters of the No camp said that the official report was biased.

There was also an investigation into the spending to organise the Montreal rally. The Director General found that supporters of the No campaign had contravened the Referendum Act by incurring regulated expenses in violation of the applicable rules in Quebec. Legal action was initiated against 18 people, some inside and some outside Quebec, but was dropped after a Supreme Court ruling invalidated provisions of the Referendum Act on which the legal proceedings were based.<sup>62</sup>

A separate investigation which published its findings in 2007 found that the No campaign had violated campaign rules by using unauthorised funds amounting to c\$539,000 from the

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<sup>58</sup> Ibid.

<sup>59</sup> "Quebec separatism brings fear of intolerance", *Los Angeles Times*, 10 November 1995

<sup>60</sup> Ibid.

<sup>61</sup> 'Referendum of October 30, 1995', Elections Québec press notice, May 13, 1996

<sup>62</sup> Elections Québec, [Major Inquiries](#) [visited 3 July 2013]

federal Department of Canadian Heritage that had not been authorised by the official agent of the No committee.<sup>63</sup>

The controversies about the conduct of the election continue. In 2013, a wide-ranging corruption inquiry, the Charbonneau Commission, heard incidental allegations that a 'bagman' for the Quebec Liberal Party had used thousands of dollars of unaccounted funds in the 1995 referendum to buy poster advertising space for the No campaign and hire guards to prevent the posters from being vandalised. The Treasurer for the Parti Québécois denounced the No campaign's behaviour: "It confirms the worst-case scenarios involving the manipulation that took place during the 1995 referendum."<sup>64</sup>

### ***Constitutional change and the Calgary Declaration***

After the failure of the Meech Lake and Charlottetown Accords and the 1995 referendum, new attempts were made to address perennial constitutional questions. Before 1995, the Meech and Charlottetown agreements had set out Quebec's distinct society status and had addressed the amendment of the Constitution, but these agreements had failed. After the vote, the Federal Government announced that it would table three instruments in the Canadian House of Commons:

- a motion recognizing Quebec as a distinct society within Canada that includes a French-speaking majority, a unique culture and a tradition of civil law
- a bill requiring the consent of Quebec, Ontario, and the Atlantic and Western regions before the government could introduce any constitutional amendment in Parliament (thus giving these provinces and regions the appearance of a veto over constitutional amendments distinct society status for Quebec and establishing provincial vetoes for certain constitutional amendments and
- a bill changing the name of the Unemployment Insurance Act to the "Employment Insurance Act" and initiating the withdrawal of the federal government from labour-market training.<sup>65</sup>

Exclusive rights to job training had been one of the traditional demands of Quebec. With these moves in the House of Commons, the Federal Government made its major contribution to 'Plan A', the strategy to show disaffected Quebecers that the Constitution was flexible and that Quebec could find its place within the federation.

Provincial premiers made what they hoped was a contribution to Plan A too. Under pressure from federal politicians such as former Prime Minister Mulroney and from the business community, provincial premiers and territorial leaders took an initiative in 1997 to restart the constitutional reform process and shore up national unity. They met in September 1997 and, after a day's discussions, they produced a Framework for Discussion on Canadian Unity. The framework was put out to extensive consultation, the premiers being all too aware of the failure of the previous accords and hopeful that the Calgary document would not meet the same fate.

The declaration ran as follows:

1. All Canadians are equal and have rights protected by law.

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<sup>63</sup> 'Option Canada and the Canadian Unity Council spent approximately \$539,000 illegally during the 1995 referendum period', Elections Québec press notice, 29 May 2007

<sup>64</sup> 'A career bagman opens up; Gilles Cloutier regales the corruption inquiry with tales of money laundering and rigged elections', *Globe and Mail*, 1 May 2013

<sup>65</sup> *Background to the introduction of the Bill C-20, the Clarity Bill*, Canadian Parliament Research Service, 2000

2. All provinces, while diverse in their characteristics, have equality of status.
3. Canada is graced by a diversity, tolerance, compassion and an equality of opportunity that is without rival in the world.
4. Canada's gift of diversity includes Aboriginal peoples and cultures, the vitality of the English and French languages and a multicultural citizenry drawn from all parts of the world.
5. In Canada's federal system, where respect for diversity and equality underlies unity, the unique character of Quebec society, including its French speaking majority, its culture and its tradition of civil law, is fundamental to the well being of Canada. Consequently, the legislature and Government of Quebec have a role to protect and develop the unique character of Quebec society within Canada.
6. If any future constitutional amendment confers powers on one province, these powers must be available to all provinces.
7. Canada is a federal system where federal, provincial, and territorial governments work in partnership while respecting each other's jurisdictions. Canadians want their governments to work cooperatively and with flexibility to ensure the efficiency and effectiveness of the federation. Canadians want their governments to work together particularly in the delivery of their social programs. Provinces and territories renew their commitment to work in partnership with the Government of Canada to best serve the needs of Canadians.<sup>66</sup>

With reference to Quebec, the declaration offered little. It set out in its second point the equality of status of the provinces, something which would not be welcome to Quebec separatists. It also gave responsibility for preserving Quebec's culture to the National Assembly of Quebec. Significantly, it states that if any power is given to one province, it must be offered to all of them.

Lucien Bouchard was not impressed, and clearly noted what looked like a downgrade from 'distinct society' to 'unique society' for Quebec:

But we are unique, they say, by the language of our majority, by our culture and our civil-code tradition," he said. "So what? What will it give us? What will it change? Nothing! What a stroke of inspiration. Quebeckers are unique. We could be tempted to add: 'Like everyone else!'... 'Unique' like the SkyDome, Cape Breton, Labatt Blue or Wayne Gretzky. This expression would render us both socially unique and a political eunuch."<sup>67</sup>

Although opinion polls showed that voters, even in Quebec, were generally quite positive about the declaration and the document was ratified by the legislatures of a number of provinces, the Calgary declaration in the end came to nothing.

### ***The Supreme Court and the Clarity Act***

If the federalists' Plan A was not working convincingly, with Quebec sovereigntist politicians openly scornful of such moves as the Calgary Declaration, there was a Plan B, which was to strengthen the rules on the secession process. Going to the courts to try to set the parameters for any future referendum was not without its risks. It could be perceived as an attempt by the federalists to constrain Quebeckers' right to express their opinion and Quebeckers might respond angrily to that by voting for separation in any subsequent

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<sup>66</sup> *The Calgary Declaration*, Ontario Legislative Library Legislative Research Service Backgrounder, 1998

<sup>67</sup> 'Success of unity plan delights Dion', *Montreal Gazette*, 2 March 1998

referendum. Equally, the courts might have come to conclusions that the federalists did not like.

On the other hand, perhaps it was better to have answer to some basic questions agreed in advance, rather than questioning the legitimacy of the process after the event. Was a simple majority (that might not, for example, amount to a majority of registered voters) necessarily a sufficient demonstration of the will of the people? What about the wording of the question? Could Quebec legally declare independence unilaterally?

Legal challenges to the 1995 referendum had been initiated before the vote, among others by Guy Bertrand, a Quebec lawyer and former contestant for the leadership of the Parti Québécois who had become a federalist. Bertrand sought an injunction to prevent the referendum taking place, but the Quebec government maintained that the court was not competent to hear a matter that was entirely political. The Quebec Superior Court ruled that Bertrand had a case and, having heard the arguments a judge declared that the change proposed by the government of Quebec would be contrary to the Constitution of Canada. Quebec's response was to announce that "Quebec does not adhere to the 1982 Canadian Constitution".<sup>68</sup>

In another challenge brought after the referendum, Mr Bertrand sought a ruling from the Quebec Superior Court that the constitutional amendment process would have to be followed for secession to be legal. The Quebec Government again claimed that the court had no jurisdiction, while the Federal Government argued that Quebec had no right to secede unilaterally and that the rule of law must be maintained. While the Superior Court of Quebec proceeded with the case, the Federal Government decided to place the questions directly before the Supreme Court of Canada in order to clarify the circumstances under which separation might take place.

Before the referendum, the Quebec government had tabled a law saying that it would have the right unilaterally to declare independence should negotiations with the federal government after a vote in favour of separation break down. The federal government's view was that a '50+1' vote should not lead automatically to independence without the rest of the country having a say. Three questions were put by the federal government to the Supreme Court:

1. Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?
2. Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?
3. In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada? In 1998, the Supreme Court gave an opinion.<sup>69</sup> Broadly speaking, the court found that provinces had no right to secede unilaterally under the constitution. Secondly, the court was of the opinion that, while there is a right to self-determination in international law for peoples who are in an oppressive or colonial situation, this did not fully apply in the case of Quebec and, in any case, that there is no right to unilateral secession in

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<sup>68</sup> Robert A Young, *The battle for Quebec*, 1999, p106

<sup>69</sup> [Reference re Secession of Quebec](#), [1998] 2 S.C.R. 217.

international law. It therefore concluded that the situation of a conflict between the constitution and international law would not arise.<sup>70</sup>

The court found that the questions were within its jurisdiction:

The reference questions are justiciable and should be answered. They do not ask the Court to usurp any democratic decision that the people of Quebec may be called upon to make. The questions, as interpreted by the Court, are strictly limited to aspects of the legal framework in which that democratic decision is to be taken.<sup>71</sup>

On the first question, the court found that the referendum could not provide Quebec with the right to secede unilaterally, but also that a 'clear' expression of Quebec's will to leave Canada could not be ignored under the Constitution:

Quebec could not, despite a clear referendum result, purport to invoke a right of self-determination to dictate the terms of a proposed secession to the other parties to the federation. The democratic vote, by however strong a majority, would have no legal effect on its own and could not push aside the principles of federalism and the rule of law, the rights of individuals and minorities, or the operation of democracy in the other provinces or in Canada as a whole. Democratic rights under the Constitution cannot be divorced from constitutional obligations. Nor, however, can the reverse proposition be accepted: the continued existence and operation of the Canadian constitutional order could not be indifferent to a clear expression of a clear majority of Quebecers that they no longer wish to remain in Canada.<sup>72</sup>

The court also found, in answer to question 2, that international law only allows a right to secession to oppressed or colonised peoples, a status which Quebecers could not claim, according to the court:

The Court was also required to consider whether a right to unilateral secession exists under international law. Some supporting an affirmative answer did so on the basis of the recognized right to self-determination that belongs to all "peoples". Although much of the Quebec population certainly shares many of the characteristics of a people, it is not necessary to decide the "people" issue because, whatever may be the correct determination of this issue in the context of Quebec, a right to secession only arises under the principle of self-determination of people at international law where "a people" is governed as part of a colonial empire; where "a people" is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states. Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. In the circumstances, the "National Assembly, the legislature or the government of Quebec" do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally.

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<sup>70</sup> [Reference re Secession of Quebec, \[1998\] 2 S.C.R. 217.](#)

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

On the third question, the court found that there was no conflict between international law and the Canadian Constitution.

The federal government sought to give effect to the opinion of the Supreme Court by way of legislation. It tabled the *Clarity Bill* (Bill C-20) in December 1999 and the Bill was passed on 15 March 2000.<sup>73</sup> The Bill set out:

- The role of the House of Commons in assessing a referendum question. The House would have 30 days to determine that a secession question was sufficiently clear. The Bill stipulated that the question could only refer to secession and not to other ideas such as further arrangements with Canada.
- The role of the House in assessing the results. This would mean that the House would have to take into consideration the size of the majority of valid votes in favour of secession, the percentage of eligible voters who cast ballots and other considerations. The Bill did not stipulate a particular majority which would amount to a clarity threshold.
- A prohibition on ministers entering into negotiations on the practicalities of secession unless the House had assessed that the expression of the will of a province's people had been clear.
- Secession should be effected by amending the Constitution and this would involve at least the Federal Government and all the provinces.
- A prohibition on federal ministers amending the constitution to effect secession unless the following had been addressed:
  - the division of assets and liabilities
  - any changes to the borders of the province
  - the rights, interests, and territorial claims of Aboriginal peoples, and the protection of minority rights.

## **6 Return of the Parti Québécois; but not of separatism?**

After the 1995 defeat, Jacques Parizeau resigned and Lucien Bouchard, the former leader of the Bloc Québécois, became the head of the Parti Québécois and Premier of Quebec in 1996. However, the PQ lost popularity and the separatist movement split into hard-line and more moderate factions.

That time also saw gradually eroding support throughout Canada for the once mighty Liberal Party; this was perhaps linked to the persistent division in Canadian society between the Quebec sovereigntists and the federalists and the apparent confusion in the Liberal Party about what to do about it.

In the first federal election after the referendum, in June 1997, national unity dominated the campaigning. The Progressive Conservatives accepted the distinct society status of Quebec and campaigned for that, while the Liberals campaigned on Plan B: the policy of reducing sovereigntists' freedom to set the referendum question and clarifying what would constitute a clear expression of the will of Quebecers. The Reform Party campaigned for the ideas that

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<sup>73</sup> More information is available in the briefing from the Canadian parliamentary research service, [Background to the introduction of the Bill C-20, the Clarity Bill](#).

would later that year be wet out in the Calgary Declaration (see above): decentralisation of federal powers but equality among provinces. Reform politicians raised the threat of British Columbia seceding if decentralisation demands were ignored by Ottawa. Meanwhile, the Bloc Québécois continued to advocate sovereignty for Quebec.

The Liberals, led by Jean Chrétien, were re-elected with a reduced majority. The Bloc Québécois came in in third place under new leader Gilles Duceppe, while the Reform Party took over as the official opposition. Questions about Quebec's status remained unresolved. Despite a decline in the likelihood of independence, the country remained sharply divided over the issue. "Everybody knows that not much can be done about national unity," said a University of Toronto historian.<sup>74</sup>

It was not until the 2006 general election that the Conservative Party under Stephen Harper finally managed to dislodge the Liberal Party from government to form a minority administration. At the 2011 election, the Conservatives finally achieved a majority in the House of Commons.

In what was perhaps a bad omen for the Quebec sovereigntist movement, the Bloc Québécois, traditional party of Francophones at the federal level, was almost wiped out in the federal election of May 2011, with many of its votes going to the largely Anglophone New Democratic Party. The federal Liberal Party also lost many seats.

At the provincial level, the Liberal Party of Quebec did surprisingly well despite its narrow escape in 1995. But on 4 September 2012, the Parti Québécois under Pauline Marois won the largest number of seats in the Quebec National Assembly and formed a minority government, after nine years of domination by the Quebec Liberals. Although it had *not* been the overriding theme of the campaign, the possibility of another independence referendum was often discussed, particularly by those opposed to one and by smaller pro-independence parties. The PQ, meanwhile, seemed reluctant to talk about the subject.<sup>75</sup>

There appears to be little revival in separatist feelings in the province, with some 30-32% in favour of independence at present, at the bottom of the range of 30-50% that it has occupied for decades. Analysts noted the lack of any messages related to independence in the recent student demonstrations against an increase in tuition fees.<sup>76</sup>

Early on, Ms Marois discounted the likelihood of another referendum during her government:

It would be difficult to have a referendum but not impossible. Nevertheless, as my party does not have a majority and it would be necessary to get the policy accepted in the National Assembly past the federalist opposition, it is difficult to imagine a referendum.

She went on to say that Quebec:

...will continue to defend its interests [...] and we are going to carry the nation forward so we can obtain more powers.<sup>77</sup>

In January 2013, Alexandre Cloutier, Minister of Canadian Intergovernmental Affairs, Francophonie and Sovereign Governance, said that he was working towards a bilateral agreement with Scotland. He said that he hoped it would be signed during the forthcoming visit by Ms Marois to Scotland, on which he would be accompanying her:

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<sup>74</sup> "Campaign Aggravates, Fails to Clarify Quebec Issue", *Washington Post*, 2 June 1997

<sup>75</sup> 'Les Québécois sont-ils toujours indépendantistes?', *Le Monde*, 4 September 2012

<sup>76</sup> *Ibid.*

<sup>77</sup> 'Pauline Marois juge un référendum «difficilement imaginable»', *Associated Press*, 16 October 2012

We are working towards a wide-ranging bilateral agreement between the two governments. We are hoping something will be signed by Ms Marois and Mr Salmond. There will be a general understanding, at least that is what we are working on.

Mr Cloutier said that he had significant contacts with the SNP and that the situations faced by Quebec and Scotland were very similar:

I have maintained links with the Scots for many years. I have met Mr Salmond and many ministers in his government. ... It is the first time that a Prime Minister of Quebec has visited a Scottish First Minister. This will be a big historic moment, the meeting of the meeting of two sovereigntist heads of state who want their regions to become countries. ... Thinking about a Scottish army, what currency would be used after the independence of Scotland, relations with the European Union; these are similar questions to the ones we face.<sup>78</sup>

The Quebec government has already signed agreements with Catalonia, Bavaria and Flanders.

Pauline Marois visited Alex Salmond in Edinburgh in January 2013. A joint statement foreseeing cooperation on matters such as renewable energy was agreed,<sup>79</sup> although it was not published by the Scottish Government or the Scottish National Party after the meeting. Commentators suggested that the SNP would not be enthusiastic to link itself to a party that had lost two independence referendums, nor would it want to alienate the rest of Canada, with which Scotland has strong historic connections.<sup>80</sup>

In May 2013, Jean Chrétien visited London to speak to British MPs and business people about the Quebec and Scotland campaigns. Chrétien said that No campaigners should not take any lead for granted after the opinion poll shock the No campaign had as the 1995 vote approached. He said that No is at an emotional disadvantage because it involves breaking people's dreams. He praised the clarity of the question to be asked of the Scottish public but questioned whether the threshold of 50% plus one was right.<sup>81</sup>

## 7 Economic uncertainty and Quebec referendums

Aside from the economic disruption if Quebec had separated, there was a lot of controversy, particularly in the 1990s, about whether the uncertainty associated with the referendums themselves had damaged the Canadian or the Québécois economy.

The prolonged uncertainty between 1980 and 1995 is often cited by commentators as a factor in Canada's economic difficulties in the 1990s. The EU's Economic and Social Committee, for one, endorsed the view, stating in an Opinion:

In 1995 a number of factors adversely affected the rate of growth (which was approximately 2 %), namely the measures which were taken to reduce the deficit, the slow-down in US economic growth and the uncertainties following the referendum in Quebec.<sup>82</sup>

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<sup>78</sup> 'Vers un accord entre souverainistes', *TVA Nouvelles*, 24 January 2013

<sup>79</sup> 'Visite en Écosse: Marois et Salmond font une déclaration commune', *Le Devoir*, 29 January 2013

<sup>80</sup> 'Pauline Marois rencontre le premier ministre écossais en catimini', *Radio Canada*, 29 January 2013

<sup>81</sup> '1 Chrétien plunges into Scottish independence debate', *Globe and Mail*, 15 May 2013

<sup>82</sup> [Opinion of the Economic and Social Committee on 'Relations between the EU and Canada'](#), OJ C 66, 3 March 1997

The new Québécois party, the *Coalition pour l'Avenir du Québec* (Coalition for the Future of Quebec, CAQ), has taken this notion on board and has made it its policy to postpone the independence debate for a generation to concentrate on building up Quebec's economy.<sup>83</sup>

The Coalition pour l'Avenir du Québec's position is supported by Lucien Bouchard, the former premier of Quebec who led the pro-independence campaign close to victory in 1995. Bouchard, until recently head of the Quebec Oil and Gas Association, now stresses the need to develop Quebec's economy rather than pursue independence. One newspaper report describes this as "his latest political obsession".<sup>84</sup>

Disenchantment with the independence debate is partly driven by a rightward shift in Quebecker politics.

## 8 Treaties and international obligations

One of the most important legal questions for the breakup of states is what happens to the international agreements that the old state reached with other states. During the 1980 campaign, the issue had come up because *Bill 1, An Act Respecting the Future of Quebec*, the Quebec Government's first move in the sovereignty campaign, had said that Quebec would assume the obligations and enjoy the rights set out in all Canadian treaties and would set about joining the United Nations, the North American Free Trade Area, NATO, NORAD and the WTO.<sup>85</sup> These positions became controversial during the campaign because, the federalists said, that depended on the goodwill of other states (not to mention other pledges, such as the continued use of the Canadian dollar in Quebec, which would require cooperation with the rest of Canada).

There are at least three different possibilities under general international law for the treatment of states that break up:

- 1: Continuation and secession, where one part of a state secedes but this is not considered to have changed the identity of the remaining part. In these cases, the continuing state keeps its international obligations and membership of international organisations, while the seceded territory becomes a new state
- 2: Separation of two states that previously came together voluntarily. In these cases the separated states may both be able to keep treaty obligations and membership of international organisations
- 3: Dissolution, where the old state ceases to exist. The treaty obligations and memberships of international organisations do not transfer to other states.<sup>86</sup>

Solid legal consensus is difficult to come by, particularly in international law, and state succession is particularly disputed. However, the general view is that in customary international law treaty obligations and membership of international organisations remain with the continuing state, if it is agreed that there is a continuing state. In many cases, it is clear that there is; on the partition of India, it was generally accepted that India was a continuation of British India, and Pakistan was a new state.<sup>87</sup>

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<sup>83</sup> "Legault: Quebec should stop threatening separation and start making money", *The Canadian Press*, 4 November 2011

<sup>84</sup> "Popular ex-premier Lucien Bouchard takes up job of selling Quebec on shale gas", *The Canadian Press*, 26 January 2011

<sup>85</sup> *Bill 1, an Act Respecting the Future of Quebec*, Clauses 13-17

<sup>86</sup> Malcolm N Shaw, *International Law*, 5th edition, 2003, p881

<sup>87</sup> DP O'Connell, *State Succession in Municipal Law and International Law*, 1967, vol.II, pp184-5

There is a tendency, on the other hand, to move towards more continuity in international agreements, so that a seceded new state may assume some of the treaty obligations of its predecessor state, but this tendency is not yet firmly established.<sup>88</sup>

These considerations apply to multilateral treaties and membership of international organisations. Signatories of bilateral treaties may decide that they will maintain the provisions of a bilateral treaty with both successor states. This was the case for the former Czechoslovakia, where the UK decided to maintain its bilateral treaties with both successor states.

Quebec became part of British North America and subsequently of Canada because of the defeat of the French by the British in the 18<sup>th</sup> century, so Canada could not be considered a voluntary union. Likewise, no-one expected Canada to cease to exist after the departure of Quebec. So of the above-mentioned three options, the first would probably have applied to Quebec and the rest of Canada: the rest of Canada after secession would have been considered the continuing state, retaining its international legal commitments; Quebec would probably have had to sign and ratify multilateral treaties and apply for membership of international organisations.

So Quebec would probably not have automatically acquired the treaties and international organisation memberships of its predecessor state Canada. In the case of multilateral treaties and memberships, joining up and signing multilateral agreements would probably not present a problem.

As far as bilateral treaties are concerned, the signatories of bilateral treaties with Canada may well have been willing in many cases simply to agree a treaty on the same terms with Quebec after separation. It has been argued, however, that signatories might in some cases have wanted to renegotiate the terms of some of those treaties, particularly where trade competition was involved, such as the Canada-United States Free Trade Agreement.<sup>89</sup> Another problem with Quebec continuing with the terms of that kind of bilateral treaty is that the rest of Canada might have resisted the Canada-United States Free Trade Agreement being turned into a trilateral treaty by the addition of Quebec. In that case a fresh treaty might have to be negotiated between the USA and Quebec.

There are exceptions to the custom that new, seceded states should not inherit the treaties of their predecessor states. Importantly, humanitarian treaties are generally assumed to pass on to seceded states. Dispositive treaties, those that deal with a particular piece of territory or with boundaries are also assumed to pass to seceded states because the territory itself does not change.

## 9 US view

Canada's only neighbour sharing a land border is the United States, and the relationship between the two countries has traditionally been very close. The neighbours are bound together by the North America Free Trade Agreement (NAFTA), although that agreement is a customs union and entails no political integration. NORAD is the North American Aerospace Defense Command agreement that provides early warning protection over the whole of the US and Canada, and there are other bilateral defence agreements that mean that the defence policies of the two countries are closely integrated. These ties along with

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<sup>88</sup> Malcolm N Shaw, *International Law*, 5th edition, 2003, p881

<sup>89</sup> Diba B.Majzub, [Does Secession Mean Succession - The International Law of Treaty Succession and an Independent Quebec](#) , *Queen's Law Journal*, Vol 24 No 2 spring 1999

comparable historical and cultural backgrounds have meant that the disagreements between the two have been relatively unimportant.

The USA has always expressed a preference for a united Canada that is strong enough to fulfil its commitments under the NORAD agreement and whose prosperity can contribute to US wellbeing (hydrocarbon reserves are an increasingly important part of that contribution). It is also helpful for the US to be able to negotiate with a single Canadian entity when dealing with negotiations over environmental matters, for example.

Nevertheless, the US would not attempt to prevent Quebec from separating from the rest of Canada if that is what Quebec City and Ottawa had agreed.

But that raises the question of what sort of relationship a newly-sovereign Quebec would have with the US. For that matter, another trajectory: an increase in the decentralisation of the Canadian state that allowed both Quebec and all the other provinces much more independence could go so far as to mean that the US relationship with the Canadian provinces would be radically changed.

After the 1995 referendum, the US Administration began to take the prospect of Quebec separation much more seriously and there were calls for stronger ties between the English-speaking provinces and US states.

## 10 Would separation have been easy?

There could have been some grounds for the rest of Canada to deny or contest the result if it had been a Yes, particularly if the vote had been as close as it in fact was but the result had been the opposite.

Firstly, the fraud carried out in some districts of Montreal would have diminished the legitimacy of the result, even if it was shown that the discrepancy was not enough to have swung the result. (In fact, the total number of spoilt ballot papers in the 1995 referendum exceeded the margin of victory.)<sup>90</sup>

Secondly, it would have been possible to contest the result on the grounds that Quebec did not have a right to self determination or to secede under either the Canadian Constitution or under international law.

Thirdly, the problem of the aboriginal nations' determination not to leave Canada with Quebec would have been a serious one, leading to questions about the integrity of Quebec's territory. Could disagreement about these issues have become strong enough to lead to Quebec making a unilateral declaration of independence? Would the rest of Canada have reacted by refusing to accept the declaration?

The prospect of a serious clash between Quebec and the rest of Canada would have increased uncertainty and market instability probably leading to a sharp fall in the value of the Canadian dollar and in inward investment. Provinces negotiating the sharing out of federal debt would have had differing interests in the way that share-out was calculated (share of population, share of GDP, share of tax base?) and that would have been likely to make those negotiations difficult. The economic consequences of open dispute would have been dire.

However, as the Yes campaign successfully argued, the rest of Canada would have had a very strong interest in minimising this sort of conflict in the event of a Yes vote. It would have

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<sup>90</sup> Derek Bateman, [Quebec: the second referendum](#), *Scottish Affairs*, no.14, winter 1996

been in the interest of both Quebec and the rest of Canada to make sure that negotiations did not break down, and the Federal Government would probably attempt to ensure that, despite the likely interprovincial tensions.<sup>91</sup>

## 11 Epilogue: separatism past and future

The following chart and table show support for the Parti Québécois in general elections in Quebec and Yes votes at the referendums.<sup>92</sup>

<b>Support for separatism in Quebec, 1970-2012</b>	
Election/Referendum	Vote % for the Parti Québécois, or for separatism in referendums
2012	31.95
2008	35.17
2007	28.35
2003	33.24
1998	42.87
1995	49.4
1994	44.75
1989	40.16
1985	38.69
1981	49.2
1980	40
1976	41.37
1973	30.22
1970	23.06

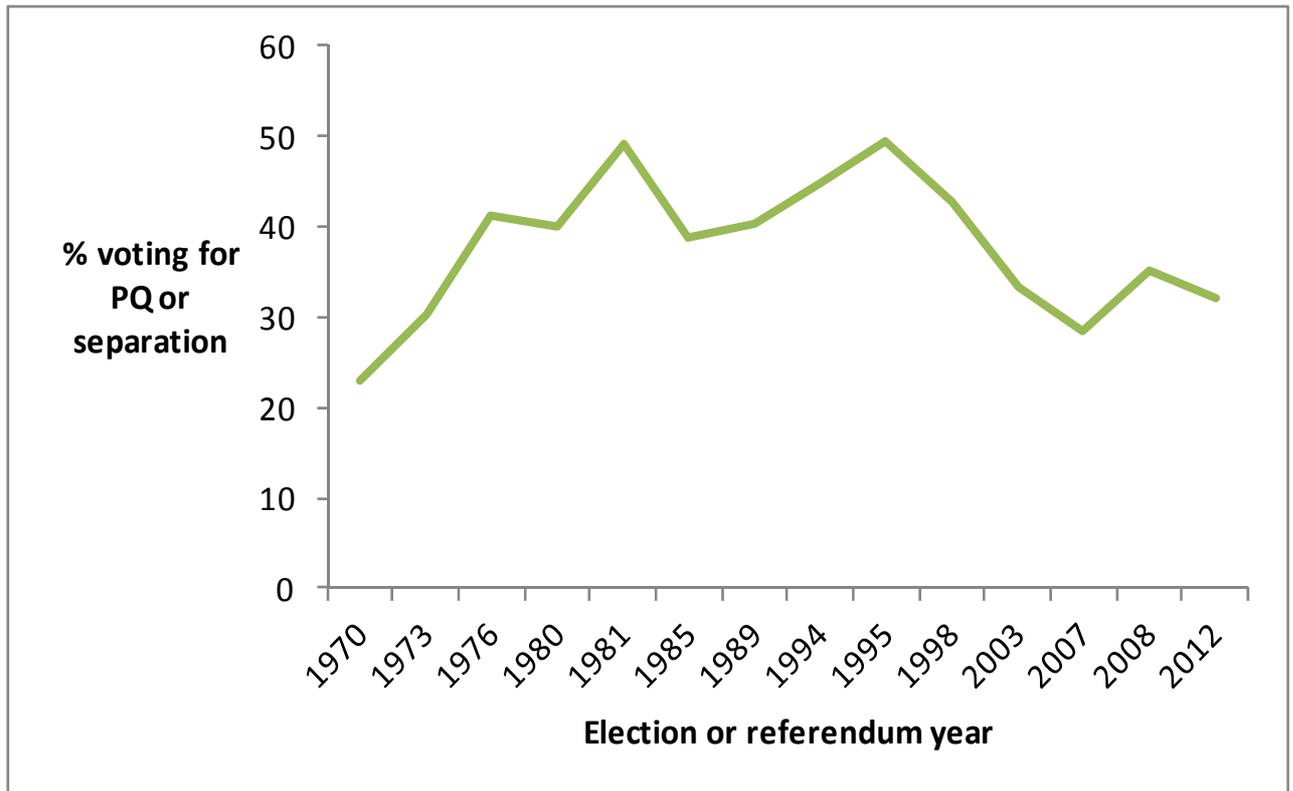
  

General election Quebec Assembly
Referendum

Source: La répartition des voix aux élections générales, Assemblée Nationale du Québec.

<sup>91</sup> For more discussion of these ideas, see Robert A Young, *The Battle for Quebec*, 1999, pp60-71

<sup>92</sup> PQ support is only a rough guide to support for separation, especially after the creation of the Coalition pour l'Avenir du Québec (CAQ) in 1994. The CAQ is nationalist but opposes moves to separation at present and contains both sovereigntists and federalists. Its support climbed to 30% in the 2007 general election and was at 27% in the 2012 election.



For some time after the 1995 referendum, the sovereignty question went into abeyance. Lucien Bouchard, for one, announced that he did not envisage further moves towards sovereignty for some time. In September 2012, the Parti Québécois under its leader Pauline Marois accepted that a referendum on sovereignty was unlikely in the foreseeable future.

An opinion poll in late 2012 asked Canadians in the rest of Canada whether they would be in favour of negotiating an association agreement with Quebec in the event of a successful sovereignty referendum. Nearly 60% said No, that they would rather have complete separation in those circumstances.

The support in Quebec for separation has been relatively weak recently. In November 2012, a sample of Quebecers was asked about their opinions on sovereignty for Quebec. 30% said that they wanted Quebec to be an independent country, 28% thought that Quebec should have more independence but remain part of Canada. The greatest proportion, 36%, thought that Quebec had enough sovereignty and should remain part of Canada.<sup>93</sup>

Opinion polling has demonstrated, therefore, that the trend in separatist sentiment in Quebec has not been in one direction, contrary to what the Quebec 'national myth' might suggest. Since the failure of the 1995 referendum, support for separatism appears to have gone into a sustained decline, although it is not clear why.

Separatism in other provinces has likewise declined. Indeed, the whole federal political scene in Canada has completely changed. The Bloc Québécois has been all but wiped out. The Liberal Party's strength has also been severely reduced, while the Conservative Party has re-imposed itself across much of western Canada and a new social democratic party, the New Democrat Party, made almost a clean sweep in Quebec at the 2011 election.

<sup>93</sup> 'Appetite for Sovereignty Remains Lukewarm in Quebec', Press notice, Angus Reid Public Opinion, 21 November 2012

The Quebec separatist movement, then, seems to have faded for now; and along with it the western separatist movement that appeared to flourish with it, and was perhaps partly nourished by it. Is Quebec separatism in long-term decline because of the failure of the 1995 referendum, or is it a victim of a general rightward shift in Quebec politics? It is hard to say. It does seem reasonable to conclude that the Quebec separatist movement tended to bring political instability to the rest of Canada. Economic forces that are pushing the standard of living up in Alberta may mean that the next serious threat to Canada's federal setup may come from the west rather than from French-speakers.

It also seems likely that the Quebec electorate is rather tired of the separatist idea. The two referendums undoubtedly implied great national upheavals and the process came to be known by some as the 'neverendum' – implying constant uncertainty over Quebec's status (and a term revived to denounce the Scottish nationalist campaign in 2012). The campaigns revealed (or exaggerated, depending on your point of view) the practical and legal difficulties that separation would entail and many argued that the uncertainty over Quebec was economically damaging in the 1980s and 1990s. Morale may have been damaged by a series of corruption scandals and many Quebecers feel that Quebec is not currently strong enough to undertake separation from the rest of Canada.<sup>94</sup>

There are some pressures that suggest that the Quebec question is likely to return. English-speaking Canada has shown some signs of reaffirming its English heritage, for example when the Navy and the Air Force regained 'Royal' at the beginning of their titles.

Added to a general conservative drift in Canadian politics, attitudes to Quebec separatism particularly seem to have become more hostile. A study in 2006 found that the coverage of the Quebec question in the *Globe and Mail*, Canada's leading newspaper, had hardened considerably since the 1995 election, reflecting a feeling that Quebecers had 'gone too far' in 1995 and the spread of the idea, hitherto largely confined to the west, that English-speaking Canada should 'let Quebec go.'<sup>95</sup> If the rightward and pro-English drift in Anglophone Canada continues and English-speakers continue to distance themselves from multi-culturalism and to take a less accommodating line on separatism, that is likely to revive separatist feelings among the Francophones. The sharply-increasing wealth in Alberta and the west may increase polarisation, too.

One Quebecer historian has argued that the Quebec separatist movement can be difficult to understand from the outside: a sizeable minority complaining about its position in a peaceful, prosperous society where the respect for human rights is given high importance. Marc Chevrier goes on to explain that Quebec society is facing a particularly potent mix of the problems that societies everywhere must handle in the age of globalisation:

... from close up, it shows a young society grappling with all the great problems which the globalisation of the economy, the erosion of the barriers between countries and peoples and the rise of regionalism and identity politics pose to most democratic countries of today. These problems – how to reconcile nationalism and democracy, political autonomy and economic interdependence, liberalism and social pluralism – the Quebecers confront day after day, which maybe explains why they vacillate so much about their political future.<sup>96</sup>

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<sup>94</sup> Carl Bergeron, 'Québec : l'hiver des souverainistes', *Causeur*, 1 February 2012

<sup>95</sup> Sylvie Lacombe, 'La perception du souverainisme québécois dans le *Globe and Mail* dix ans après le référendum de 1995 : du syndrome post-traumatique au repli légaliste', *Canadian Journal of Media Studies*, vol2(1), April 2007

<sup>96</sup> Marc Chevrier, *Le fédéralisme canadien et l'autonomie du Québec : perspective historique*, 1996

The Quebeckers' vacillation has undoubtedly changed Canada. While demands for Quebec secession may come and go, the closeness of the 1995 vote seems to have changed the way that Canadians in the rest of Canada feel. According to one commentator, the 1995 referendum made English-speaking Canadians open to the idea of a Canada without Quebec:

Unlike the silence around such questions in the past, the people of the rest of Canada now accept that the terms of secession should be spelled out in a tough-minded and hardened spirit. They talk openly of force, of carving up Quebec's territory and of demanding higher thresholds of consent in any future referendums. On track two, they now think openly about and plan for a Canada without Quebec; they toy with constituent assemblies and other previously radical options on process. Taboos around substance and process all fall before us.<sup>97</sup>

Not only are there the questions of Quebec sovereignty and of decentralisation of power in favour of the provinces, there is also the vexed question of Senate reform, the role of the Monarchy in Canadian politics and the constitutional position of indigenous peoples. While re-opening the debate about reforming the Constitution might not be very popular with the electorate, it may have to happen before too long. The likelihood of success in any negotiations on the Constitution will probably hinge on the biggest question: the future of Quebec.

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<sup>97</sup> David Milne, quoted in Robert A Young, *The Struggle for Quebec*, 1999, p77-8

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