University of Alberta

Brave New World?

Special Status for Quebec in the 1990s

by

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A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirements for the degree of Master of Arts

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled "Brave New World? Special Status for Quebec in the 1990s" submitted by Shannon Marchand in partial fulfillment of the requirements for the degree of Master of Arts.

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"Canada won." Prime Minister Jean Chrétien
Quoted in the *Calgary Herald*, February 5, 1999 (Cheadle, A1).

With these words, Prime Minister Jean Chrétien announced that First Ministers had signed *A Framework to Improve the Social Union for Canadians* at 24 Sussex Drive on February 4, 1999. The notable exception to the day's rejoicing was Lucien Bouchard, the Premier of Quebec, who had been alone among the Prime Minister, Premiers, and Territorial Leaders in not agreeing to sign the Social Union Framework Agreement. The Agreement was hailed as an important step in the evolution of Canadian federalism, confirming the arrival of a new era of collaborative federalism. However, the general satisfaction and the Prime Minister's assessment of the event are intriguing, given the refusal of the Premier of Quebec to sign the Agreement. While the Framework Agreement may indeed herald a new era of federal-provincial collaboration (an assessment that remains to be seen), the far more important aspect of the Agreement is its implicit confirmation of a trend towards asymmetrical federalism, the granting of special status to Quebec, that has been gathering speed since the Meech Lake Accord of 1988. As such, this trend represents the partial victory of the dualist vision of Canada, at the expense of competing visions. This vision, which conceives of a Canadian state composed of two nations – one of which is centred in Quebec – has been given practical meaning through asymmetrical arrangements that have been developed throughout the 1990s. This thesis will explore these developments and compare them to the last decade when asymmetry was a prominent feature of Canadian federalism, the 1960s.

Before proceeding with any analysis of these issues, it is important to have a clear definition of federalism from which to work. Garth Stevenson offers the following:

> It is a political system in which most or all of the structural elements of the state (executive, legislative, bureaucratic, judiciary, army or police, and machinery for levying taxation) are duplicated at two levels, with both sets of structures exercising effective control over the same territory and population. Furthermore, neither set of structures (or level of government) should be able to abolish the other's jurisdiction over this territory or population.
> (Stevenson 1982, 8)

Two other elements of federalism are implicitly addressed in Stevenson's definition, but are worth making explicit. In a federal system the two orders of government do not, for the most part, legislate in the same policy areas; these are divided. Given the need to demarcate roles and responsibilities a written constitution is commonly identified as a defining characteristic of federation. In the *Constitution Act, 1867* the division of powers between the two orders of government is found in sections 91-95 and 109 (Canada 1989, 26-37). This has been supplemented by subsequent amendments, judicial interpretation, and convention. Secondly, an adjudicator is needed. Conflicts between the two orders of government are inevitable, and it is necessary for a third party to decide when one is attempting to operate outside of its constitutionally defined jurisdiction. In Canada the role of ultimate arbiter has been fulfilled by first the Judicial Committee of the Privy Council, and since 1949, the Supreme Court of Canada. While Canada is clearly a federation today, this was not so clearly the case in 1867, despite the existence of most of a federal framework (Mallory 1954, 10). Neither order of government was entirely sovereign within its own areas of jurisdiction. The central government was limited in its policy capacity as part of the British Empire; the British government could overrule Canadian legislation that did not meet the Empire's ends. Likewise, the federal

government put itself in a similar position over provincial governments, using reservation and disallowance to invalidate provincial legislation that did not meet the Dominion's favour (ibid., 9). While the clauses of the constitution that made Canada a replica of the British Empire still exist, they are dead letters, and Canada functions as a true federation.

While the above definition describes the features of a federal system, it does not address why a country would become a federation. "The underlying rationale for federalism is a belief that while some matters are better decided by the national political community, others should be left to regional political communities" (Petter 1989, 464). Sufficient differences exist between the regional communities in a federation that not all legislation can be decided by a single government; matters where territorial differences are most profound must remain the responsibility of the regional governments. Citizens in a federation have identities as members of both the broader national community and their local – in the Canadian case, provincial – community (in addition to numerous other personal identities they may hold). Much of the debate that occurs within a federal system is directly linked to differing conceptions of the relative importance of these duelling identities. While a definition of federalism may suggest that the federal system is finalized once the constitution is written, the reality is far different. Federations are in constant flux, even if the written constitution that defines the system is not. This flux reflects the relative importance of competing visions of how the system should work, and which aspect of citizens' various identities should dominate. In the Canadian context François Rocher and Miriam Smith argue that there are four dimensions, or competing visions, that have driven much of Canada's modern constitutional debate (Rocher and

Smith 1995, 46). These are: a rights-based constitutional vision, nationalizing federalism, equality of the provinces, and dualism.

Rights-Based Vision of Federalism

The rights-based constitutional vision – the newest – differs markedly from the others identified by Rocher and Smith. "The rights-based approach anchors its vision in individuals and groups as rights-bearers and envisions the constitution as a mechanism for entrenching and protecting rights rather than national or territorial identities and interests" (Rocher and Smith 1995, 61). In other words it is not about federalism; it is, at best, indifferent to federalism, and more often hostile to a form of government that results in differential treatment of citizens within national borders. This vision of Canada was given its strongest recognition in 1982 with the inclusion of the *Charter of Rights and Freedoms* in the patriated constitution. The individual rights in the *Charter* are civic rights that represent fundamental principles of democracy and justice. While the *Charter* applies these principles in a specific way to Canada, they are understood as basic human rights. However, the rights-based constitutional vision enshrined in the *Charter* has a focus beyond the notion of "equal rights" for all citizens. It also emphasizes collective rights. Some of these are distinctly Canadian, such as minority language rights that were a primary project of the federal government (Simeon and Robinson, 259), while other rights, such as Aboriginal, gender, ability, and sexual orientation, are "connected to transformations in the legal, socio-political, and normative components of the international environment" (Cairns 1995, 134-35). The ultimate function of these rights, both individual and collective, is to limit the scope of action of the state, either federal or

provincial. As a result, this vision tends to be most strongly promoted by citizens, particularly those who hold collective rights, rather than their governments.

Nationalizing Federalism

Another dimension of the Canadian constitutional debate identified by Rocher and Smith is nationalizing federalism, which focuses on the federal government. This vision has its roots in the last century with the Fathers of Confederation, most of whom strongly favoured a centralized federal system. There is little doubt that Sir John A. MacDonald would have preferred a unitary state, and when federalism became the only alternative to win the support of Quebec and the Maritimes for the union, he favoured a highly centralized federation (Stevenson 1982, 27). While MacDonald was thwarted in his desire for a unitary state, he still saw the central government as the pre-eminent legislative institution in the Dominion, arguing during the confederation debates of 1865 that,

> We have given the General Legislature all the great subjects of legislation. We have conferred on them, not only specifically and in detail, all the powers which are incident to sovereignty, but we have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the local governments and local legislatures, shall be conferred upon the General Government and Legislature.
>
> (Quoted in Rohr 1998, 417)

This view certainly has authority when considering the *Constitution Act, 1867*, which granted the federal government the primary powers over the economy so that it could properly execute its nation-building role, in addition to the powers of reservation and disallowance. This dominant federal role extended through the 1900s with the first National Policy, which was based on continued federal management of economic development.

Rocher and Smith suggest a second version of nationalizing federalism developed in English Canada during the Depression (58). It was argued at that time that power should be centralized with the federal government so that it could exercise sufficient control over the economy and society to alleviate the effects of the Depression. While provinces did not generally hold this view it was prominent among much of the academic community and liberal-left social democrats of the 1930s (Rocher and Smith 1995, 58). In the assessment of V.C. Fowke, this focus on public welfare, along with agricultural and monetary policies, constituted Canada's "new" national policy (Fowke 1952, 283). This general view continued following the Second World War, driven by the desire to develop the welfare state.

> The requirements of Keynesian macro-economic policy legitimated federal demands for sufficient control over taxation and spending to influence overall levels of demand. The [post-war] tax rental agreements provided such control on the revenue raising side of fiscal policy. Social policies, some of which fluctuated counter-cyclically with unemployment, provided control over the expenditure side. The federal government did not need to control all aspects of social policy design and implementation in order to achieve this control as long as every province met certain minimum standards.
>
> (Simeon and Robinson, 146)

Rocher and Smith suggest nationalizing federalism was resurrected by the Trudeau government in the late 1970s as a response to Quebec nationalism and the 1976 election of the Parti Quebecois, and included, for the first time, the explicit concept of citizenship (Rocher and Smith 1995, 58). "In this view, Canadian political identity overrode regional and national identities" (ibid.). Ironically, the *Charter of Rights* was a key part of this strategy, as it would enhance attachment to the Canadian state at the expense of territorially based, sub-national identities. "A constitutional charter that speaks in terms of a uniform set of rights for Canadian citizens is conceptually unfriendly to the value of

provincial diversity" (Russell 1990, 258). While centralizing and rights-based visions of Canada both are hostile to provincial diversity, and seemed to converge in the late 1970s, it remains valuable to retain two distinct concepts. Centralizing and rights-based visions of Canada are not synonymous; this paper will demonstrate that the federal government has enhanced its role in the 1990s without relying on a rights-based vision of Canada. It is of little surprise that the key supporter of this view of federalism is the federal government, the prime beneficiary of the political project supported by nationalizing federalism; that is, the expansion of the federal state "not just for economic and social reasons, but also as the symbolic cradle of national citizenship" (Rocher and Smith, 61).

Equality of the Provinces

A third perspective is equality of the provinces, which, not surprisingly, has its roots in provincial political systems outside of Quebec.[1] Provincial politicians and their bureaucrats have promoted this viewpoint since the last century as a means to enhance their power and recognition within the political system. Stevenson identifies provincial Liberals in Ontario as an early example. They "changed very quickly from centralists into strong supporters of provincial autonomy" when they formed the provincial government following Confederation (Stevenson 1979, 75). The notion of equality of the provinces gives a dual meaning to equality. The first is that both orders of government – federal and provincial – are equal. This premise is based on the logic of classical federalism, whereby each order of government is sovereign within its spheres of

[1] Rocher and Smith use the term "compact theory" interchangeably with equality of the provinces. While the compact theory, which maintains that the Canadian federation is a political compact (akin to a treaty) between the provinces (the British North American colonies of the 1860s) that can thus only be amended by them, has been a popular justification for theories of provincial equality, the two concepts are distinct. The key difference is the legitimacy of the federal government: the compact theory sees provinces as equal to one another and pre-eminent ahead of the federal government, while the general notion of equality of the provinces suggests both the equality of the provinces with one another, and with the central government.

responsibility. The two orders of government operate separately, and independent of one another in their respective fields of jurisdiction. While maintaining this sort of division has become increasingly difficult as modern governments deal with a wide range of interconnected policy issues, efforts to maintain clear lines of responsibility remain important, if for no other reason than to ensure the democratic accountability of governments for the actions they take. The second, arguably more significant, meaning of equality is the notion of equality between the provinces; in other words, the provinces each have identical powers and responsibilities. While the *Constitution Act, 1867*, is somewhat ambiguous on the issue of equality of the provinces (regional allocation of Senators, for example, versus the allocation of identical powers to all provinces under s.92), the *Constitution Act, 1982* more fundamentally supports the notion of equality of the provinces through the amending formula, which gives each province an equal voice on proposed constitutional amendments (Rocher and Smith 49). While the equality of the provinces perspective was initially developed as a means to promote provincial autonomy, it has since become a much more fundamental part of the definition of the Canadian political community (Rocher and Smith, 50). Ultimately, this view defines for many Canadians their vision of Canada and is manifested, for example, in the demand for a triple-E Senate. Cairns suggests this view has taken hold in some quarters to the extent that it creates an almost intractable political equation, as three different equalities – of citizens, of provinces, and of nations – compete for recognition within the constitution (Cairns 1995, 236).

Dualism

The final constitutional dimension identified by Rocher and Smith, and the focus of this thesis, is the dualist vision of Canadian federalism.[2] Dualism has always held a prominent place in discussions of the Canadian federal system because it is closely tied to Quebec nationalism, which is in many ways the driving force behind constitutional change in Canada. While nationalist forces in Quebec by no means solely account for the evolution of Canadian federalism, they have often been the key factor in forcing formal consideration of constitutional issues. There is considerable irony in this fact, given that these formal considerations have yet to result in the satisfactory constitutional entrenchment of the dualist vision. The place of Quebec at the centre of Canada's national unity puzzle is a result of a conception of French Canada, centred in Quebec, as a distinct sociological nation. In Quebec's case, this nation is based on a common ethnicity[3], language, culture, territory, and history, factors that are generally advanced as defining features of nations (Dickerson and Flanagan 1990, 46). A common phenomenon among members of a nation is a sense of loyalty to the nation, or nationalism, which rests "upon fundamental needs for group identification" (Dickerson and Flanagan 1990, 153). The point at which it can confidently be stated that a Quebec nation existed is not clear. The beginnings of New France in the 1600s were an attempt to develop just that, a new

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[2] Subsequent chapters of this thesis will use the term "dualism" interchangeably with "special status", "distinct society", and "asymmetry". It is important to recognize that these latter three terms are not constitutional visions, but rather are means to recognizing the dualist vision of Canada. In other words, distinct society status for Quebec is a way to give meaning to the dualist vision of Quebec as one of two nations in a bi-national Canadian state.

[3] Quebec nationalism has recently focused on a civic nationalism, that is, a nationality defined by citizenship in the Province of Quebec. The extent to which this conception of nationalism has taken hold is questionable, and it is clear that the historical basis of French-Canadian nationalism is found in a common ethnic background.

France in North America. However, by the early eighteenth century a shift had occurred and the *Canadien* identity had begun to emerge (Francis, Jones, and Smith 1992, 79).

> This process was fostered not only by palpable cultural differences from, and open conflict with, the aboriginal population and the rival English-speaking colonists, but also by simple isolation from metropolitan France. It was further strengthened by struggles for power and status between the permanent residents of the colony (or *habitants*) and the metropolitan Frenchmen who monopolized the positions of authority – ecclesiastical, political, and military – in the colony. (McRoberts 1997, 4)

The collective identity of the *Canadiens* was sufficiently developed that the British were unable to assimilate the French Canadians following the conquest of New France in 1763. This resulted in a policy of dualism, whereby the French and English elements of the Canadian colony were legislatively distinct, either as Upper and Lower Canada under the *Constitution Act, 1791*, or as Canada West and Canada East in the Parliament of the United Canadas created in 1840. The breakdown of this latter institution, which McRoberts argues formalized dualism (6), was one of a number of factors that led to confederation in 1867.

The move to confederation was based on two very different understandings of what principles would animate the new union of the British North American colonies. From the perspective of Quebec, which by the 1860s had come to conceive of itself as one of two Canadian nations (reinforced by the institutional arrangements of the United Canadas), Confederation was indeed a pact between "two nations" (Taylor 1985, 217), with the English nation previously embodied in Canada West (now Ontario) expanded to include the Maritime colonies. In this view of Canada as a bi-national state, the allegiance of the Quebecois to the Canadian state flows through their allegiance to their nation. This dualism likewise understands that Canada outside Quebec is a comparable

nation, the counterpart of the Quebecois. Unfortunately, this view has never been broadly shared with the rest of Canada, where the competing conceptions of federalism have been prominent. None of these have required allegiance to the Canadian state to be mediated through a sub-national identity. Despite the absence of a common understanding of Confederation, political accommodation still occurred; various political arrangements were negotiated among Canadian elites who held "something like a common understanding of what these involve" (Taylor 1985, 217). This was the case for the first 100 years of Confederation, as the dualist and various non-dualist visions of Canada co-existed relatively peacefully, if somewhat uneasily.

Peaceful coexistence ended with Quebec's Quiet Revolution in the 1960s. This was the result of a shift in the character of Quebec nationalism, which until that time had been primarily defensive and insular. By the 1960s, Quebec nationalism had combined with liberalism to create a "new" nationalism predicated on creating a modern French society in North America, largely by using the tools of the provincial state apparatus (Taylor 1993, 5). The "new liberal Quebec nationalism gave rise to demands that the Canadian political order be refashioned to conform better to the Canadian duality and the centrality of Quebec within it" (McRoberts 1997, 34). The advent of the new Quebec nationalism signalled the end of the uneasy truce between competing visions of Canada, launching the constitutional odyssey of the last forty years. At its root, this odyssey has been driven by the need of Quebec nationalists for their vision of duality to be formally recognized in Canadian society. This need for recognition is one of the driving forces behind nationalism (Taylor 1994, 25), a "doctrine that provides emotional and intellectual justification for a people's power over the place they claim is theirs" (Cook 1995, 10).

While Quebeckers who call for national recognition through statehood remain a minority (although only just, if the 1995 referendum results are any guide), most Quebeckers want their nation to be properly recognized within the institutional framework of the Canadian state. The desire for recognition is based on an understanding that external recognition is an important part of an individual's identity, their understanding of themselves and their fundamental defining characteristics as a human being (Taylor 1994, 25). Because our identity is shaped by recognition, "[n]onrecognition or mis-recognition can inflect harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being" (ibid.) The result, then, is a desire by Quebeckers to have their dualist vision of Canada, which is an outgrowth of their collective identity as a distinct sociological nation, formally recognized within the Canadian constitution.

These final two visions share the underlying assumption that Canada is a federal society. That is, that important differences exist between the various parts of the country that would make a unitary state inappropriate. These particularisms can be accommodated in the political institutions of a state in one of two ways. "The first is that these are channelled within the structures and processes of the central government itself" (Smiley 1980, 274). This is intrastate federalism, and is the role that many Canadians (particularly in Western Canada) expect for the Senate. However, Smiley argues that Canada has evolved so that intrastate mechanisms are no longer an effective outlet for territorially based interests and aspirations (ibid., 274-75). This leaves the second option, "a federal division of powers in which responsibility for those matters where territorial differences are most profound is conferred on the states or provinces" (ibid. 274). This is known as interstate federalism. The key distinction between these two approaches is who

speaks for regional political communities: national or provincial representatives? The current division of powers, which confers the same powers on all provincial governments, supports the equality of the provinces. However, the Government of Quebec argues that it should have additional powers to protect the French nation; this is an example of an interstate federalism to support the dualist version of Canada. The intrastate corollary would be additional powers for Quebec parliamentarians not available to those representing other Canadians. Both of these approaches have been recommended as means to address the competing constitutional visions of federalism in Canada.

The desire for recognition of the dualist vision was a key motivator of Canadian constitutional politics from the 1960s onward, and the process it began ultimately resulted in the patriation of the Constitution in 1982. Indeed, the objective of a redefined role for Quebec in Canada has been a goal of every Quebec government in modern times (Simeon 1988, S8). While the forces of Quebec nationalism played a key role in launching the process that led to patriation, and many English-speaking Canadians understood the act of patriation as a response to Quebec nationalism, the new *Act* did not have the agreement of the province of Quebec (McRoberts 1997, 184, 187). Kenneth McRoberts goes so far as to suggest, with convincing evidence, that the vision of Canada enunciated by Pierre Trudeau, and successfully enshrined in the *Constitution Act, 1982*, "had, in fact, been constructed to deny the uniqueness of Quebec" (186). The victory of patriation, then, was clearly mixed. Most Canadians who lived outside of Quebec (as well as some within the province) were pleased with patriation and the visions of Canada – provincial equality, centralizing federalism, and rights-based – that it entrenched,

visions that were decidedly not dualist. This happiness was, for the most part, not shared within Quebec, particularly among French-speaking Quebeckers, who felt that their constitutional aspirations had been ignored, if not deliberately rejected. Nonetheless, it seemed as if Canada has escaped its constitutional quagmire. Quebec nationalists had been defeated in their referendum of sovereignty and the Constitution had been brought home. By the end of 1982, it looked as if the dualist vision had been firmly displaced by the combination of visions that were found in the *Constitution Act, 1982.* Indeed, Quebec nationalism appeared to disappear, with the "Quebec general election of 1985... the first since 1940 in which the national question was not of some importance" (Smiley 1987, 149).

The Meech Lake Accord

This sense of constitutional calm was upset by the election of Brian Mulroney, who came to power in 1984 "determined that Quebec should symbolically rejoin the Canadian constitutional family 'with honour and enthusiasm'" (Dyck 1996, 55). Practically, this meant reinserting the dualist vision into the Canadian constitutional discourse. The result is well known to all Canadians: the Meech Lake Accord. Prime Minister Mulroney was able to act on his promise with the election of the Quebec Liberal Party under Robert Bourassa in 1985. In May 1986, Bourassa's minister of intergovernmental relations, Gil Rémillard, presented his government's five conditions for accepting the 1982 constitution to a conference discussing the future of Quebec and Canada (Russell 1993, 133).

> These were: constitutional recognition of Quebec as a 'distinct society,' a constitutionally secured provincial role in immigration, a provincial role in Supreme Court appointments, limitations on the federal power to spend in areas

> of provincial jurisdiction, and an assured veto for Quebec in any future constitutional amendments (Simeon 1988, S9).

While little public debate occurred around Quebec's proposals, intergovernmental negotiations soon began. With the support of the federal government, Quebec officials took various proposals for constitutional reform to the other provincial governments for discussion, with the objective of shaping the five conditions into constitutional proposals that could be supported by all provinces (Russell 1993, 135). At their 1986 conference in Edmonton, Premiers agreed to give priority to Quebec's concerns, setting the stage for another round of constitutional negotiations. Bilateral meetings between the federal government and individual provinces followed this, as well as a multilateral negotiating session, leading to the conclusion of the Meech Lake Accord by First Ministers on April 30, 1987 (Simeon 1988, S9; Russell 1993, 135-136).

The Accord addressed all of Quebec's demands, although this was accomplished by making all but one of them available to all provinces. The exception was the "distinct society" clause, which called for the Constitution of Canada to "be interpreted in a manner consistent with... the recognition that Quebec constitutes within Canada a distinct society." The Accord also affirmed the role of the legislature and Government of Quebec to preserve and promote this distinct society. In response to Quebec's demand for greater involvement in immigration, the Accord called for the federal government, at the request of *any* province, to negotiate with that province an agreement relating to immigration or the temporary admission of aliens to the province. Once completed, these agreements would only be changed with the consent of both parties, thus essentially giving them the protection of constitutional entrenchment, (Russell 1993, 136). Regarding appointments to the Supreme Court, the Accord entrenched the existing

practice that three of the nine justices on the Court would be appointed from the Province of Quebec. In addition, the Accord provided for *each* province to provide the federal government with lists of persons eligible for appointment when a vacancy arose on the Court. The Meech Lake Accord contained the following limitation on the federal spending power:

> **106A.** (1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

Finally, the Accord provided Quebec's desired constitutional veto, again by providing a veto to all provinces. This was accomplished by requiring unanimity of the potential amendments to which the 7/50 formula had been applied in the *Constitution Act, 1982*.[4]

The Meech Lake Accord provides concrete examples of how the Quebec vision of duality could be addressed through both intrastate and interstate devices. The first, of course, is straightforward recognition as embodied in the distinct society clause. Such a statement gets to the heart of Taylor's assertion that recognition is a key component of identity. Within a state, the most important place for this recognition to occur is in the constitution, as constitutional politics symbolically go far beyond any other political activity. Cairns notes "constitutional politics is the supreme vehicle by which we define ourselves as a people, decide which of our present identities we should foster and which ignore, and rearrange the rights and duties of citizen membership" (1995, 157). This is the only place where recognition as conceived by Taylor can meaningfully occur, of

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[4] A final element of the Accord was the provision that Senate vacancies would be filled from lists of candidates provided by the provincial governments to the federal government. This change was included to

which the distinct society clause is a prominent example. In conferring distinct society status on Quebec, the Accord also created the potential that it would result in increased powers for the provincial government of the province. The clause "adds an additional element to the basket of interpretive devices at the disposal of Supreme Court judges, who will not be able to ignore the entrenchment of Quebec's specificity in the fundamental law of the land" (LaForest 1988, 83). LaForest suggests there will be circumstances, such as the issues of bilingual signs in Quebec, that would justify the Court overriding the Charter in favour of the Government of Quebec. The role of the Quebec government in preserving and promoting this distinct society also suggests that the province may try to assume additional responsibilities; certainly LaForest argues the clause will grant further legitimacy to the province's efforts to take advantage of the other terms of the Accord, such as the immigration provisions (ibid., 84).

As an interpretive clause for the Constitution, the distinct society clause occupies a curious position between inter and intrastate federalism. The recognition of the distinct society does not simply stand as a guide for interpreting Quebec legislation; it could equally apply to federal legislation. Thus, the provision has both inter and intrastate implications. Arguably, there is a stronger interstate impact because the clause also recognizes a specific role for the Quebec government that does not exist for the federal government. The clear example of intrastate federalism in the Accord is the entrenchment of the practice of three Supreme Court Justice coming from Quebec, as there is no similar provision for any other province. However, the unique status this provides Quebec is tempered somewhat by the fact that the province has a civil code.

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meet the demands of Alberta, as was the provision for a future constitutional conference to further discuss Senate reform (Russell 1993, 137).

Regardless of whether one supports a dualist vision of Canada, there is a practical need for the Supreme Court of Canada to have expertise in civil law, and there is some logic to entrenching this provision in the constitution. The rest of the Accord more clearly provides for interstate initiatives, as all provinces could negotiate an immigration agreement with the federal government, provide nominees for the Supreme Court, opt out of national shared-cost programs, and exercise a constitutional veto. The extension of these powers to the provinces is an example not only of interstate federalism, but also recognizes the constitutional vision of equal provinces. Constitutional negotiations are very difficult fora to negotiate additional powers simply for Quebec, as other provinces, who see themselves as equal, argue for the same powers. Thus the only distinct powers available to Quebec are those that flow from the distinct society clause.

Ultimately, the Meech Lake Accord failed. Alan Cairns offers various explanations for the Meech Lake outcome, arguing it can be understood "as a conflict between ... the government's constitution versus the citizens' constitution; as executive federalism versus the Charter; as the old duality of founding peoples versus the new ethnic, racial and indigenous complexity of contemporary Canada; or as the culture of deference and authority versus and emergent culture of constitutional participation" (Cairns 1995, 150). The amending formula remains in the style of classic Canadian executive federalism, as governments, and only governments, have a say in changing the constitution. This does not sit well with an increasingly participatory constitutional culture, where individual Canadians see themselves reflected in the *Charter* and demand a say in how their constitution is changed. Elite control of the amending formula enabled First Ministers to pursue a constitutional vision that many English Canadians

fundamentally disagreed with (Russell 1993, 142). This was perhaps the most important reason for the Accord's defeat. Canadians outside Quebec, as previously stated, have never been attached to the notion of duality. Further, many rejected the premise that the Constitution Act 1982 had been imposed on Quebec, believing the support of the Trudeau government and the federal MPs from Quebec to be a significant indicator of the province's acceptance. Cairns has phrased this rejection in the language of the "three equalities" – of nations, provinces, and citizens – which are in constant competition. These are Rocher and Smith's competing constitutional visions and all have currency in Canadian constitutional debate. Many English Canadians will not accept the dualist vision (equality of nations) because it offends both equality of the provinces (when pursued through asymmetrical arrangements) or equality of citizens (by recognizing Quebec as a distinct society, with the potential to undermine *Charter* rights in Quebec).

Conclusion

Given that the rejection of the dualist vision was a key reason for the failure of the Meech Lake Accord most Canadians would not be faulted in thinking the dualist vision had been laid to rest. However, this thesis will suggest that as with the *Constitution Act, 1982*, this has not been the case. I will argue that the dualist vision has been pursued since the failure of the Meech Lake Accord, sometimes explicitly and sometimes by stealth. This thesis will explore the trend favouring the dualist vision from the ill-fated Charlottetown Accord to the 1999 *Framework to Improve the Social Union for Canadians*. Both constitutional/quasi-constitutional and non-constitutional processes have been undertaken with either the intention (as in the Charlottetown example) or the result (in the case of the Social Union Framework) of recognizing a dualist vision of

Canada. In other words, changes have been proposed or made that give Quebeckers, through either their federal or provincial governments, powers that are not available to other Canadian citizens. However, in the latter part of the 1990s these efforts have seldom been explicitly characterized as recognizing a dualist vision of Canada, although arguably the implicit rationale behind such proposals is this vision of the federation. This analysis will be situated within the context of the first (and last) modern period during which asymmetrical arrangements with Quebec was the *modus operandi* of the federal government, the mid-1960s. Prior to the arrival of Pierre Trudeau on the federal scene, the Government of Canada pursued a number of initiatives that resulted in asymmetrical arrangements with Quebec. The following chapter will examine that era, with a view to understanding the motivations of the actors, and the nature of the asymmetrical arrangements that were developed. Chapter Three will consider the evolution of Canadian federalism in the first half of the 1990s, which was characterized by efforts that clearly recognized the dualist vision of Canada. While the period was dominated by the Charlottetown Constitutional Accord, other initiatives were pursued by the federal government. These were the non-constitutional Canada-Quebec immigration accord of 1991, and the quasi-constitutional initiatives implemented by the federal government following the 1995 sovereignty referendum in Quebec. The events that occurred after 1995 took place in a significantly different context, defined largely by the 1995 federal budget, which resulted in provinces trying to take a leadership role in the renewal of social policy. The federal government agreed to participate in the provincial agenda and used it as a means to reinstate the role it had given up with the introduction of the Canada Health and Social Transfer in 1995. New public management theories of performance

measurement have played an important part in enhancing the role of the federal government. This context will be explored in Chapter Four, before considering the post-1995 policy initiatives in Chapter Five. This chapter will address the development of Employability Assistance for Persons with Disabilities, the National Child Benefit, the National Children's Agenda, *In Unison*, environmental harmonization, and the Social Union Framework Agreement. Particular attention will be paid to the Framework Agreement, as it sets the ground rules for intergovernmental cooperation in a range of policy fields. The practical result of these initiatives has been to paradoxically support the visions of both centralizing federalism and dualism, resulting in Gibbins' 9-1-1 federalism (Gibbins 1999, 217). The trend toward dualism has largely been achieved by stealth, however, as Quebec has simply chosen not to participate in certain intergovernmental initiatives, rather than calling for other governments to recognize the dualist vision. The concluding chapter will attempt to assess the sustainability and implications of this brave new world of 9-1-1 federalism.

Ultimately, this thesis will illustrate that the dualist vision, in the form of asymmetrical arrangements that favour Quebec, appears to have been the most successful constitutional vision in the last twelve years. Despite the fairly clear rejection of this vision by Canadians when it promoted during the Meech Lake Accord, it has remained a key part of the discourse on the shape of the Canadian federation in 2000. Moreover, it has had its greatest success through non-constitutional intergovernmental approaches in the latter part of the 1990s. This is not, to suggest, however, that the other constitutional visions identified by Rocher and Smith, have disappeared. Indeed, the centralizing vision had, by the 1990s, been given a substantial boost through the initiatives pursued by the

federal and provincial governments. The following analysis will consider the role played by this, and the other two constitutional perspectives, in the evolution of Canadian federalism over the last decade, and try to provide some explanations for their place in relation to the dualist vision.

Chapter Two: The Pearson Years – Dualism in the 1960s

The 1960s were memorable years for Canada. With the Centennial Year in 1967, and the accompanying celebration, including Expo '67 in Montreal, Canadians were in a festive mood, enjoying continued post-war prosperity. The celebration even seemed to extend to politics, as a new flag was adopted, and Canada's "pop star" Prime Minister, Pierre Trudeau, emerged. Canadians were flying high; unfortunately the good times did not last. Already the winds of Quebec separatism were beginning to blow, and in the 1970s FLQ terrorism and the onset of stagflation brought Canadians crashing back to earth. The new Quebec nationalism that drove separatism had emerged in the province in the late 1950s, and had been a significant motivator of political events throughout the 1960s. The federal government led by Lester Pearson initially responded to the demands emanating from Quebec by supporting a dualist notion of Canada, recognizing Quebec as the homeland of the French Canadian nation. This occurred through the Royal Commission on Bilingualism and Biculturalism, and policy measures, including the creation of separate Canada and Quebec Pension Plans, Established Programs Financing, the implementation of student loans for post-secondary students, and the expansion of Family Allowances, that enabled the Quebec government to exert greater control than other provinces in the areas of provincial jurisdiction that interested the federal government. These policy measures share the following features of this era of federal-provincial relations: recognition of a legitimate provincial role, the expansion of the state, the power that nationalism gave to the government of Quebec, equality of the provinces (in principle), a belief that separatism could be addressed by accommodating Quebec, and

a general trust between governments, particularly between the federal and Quebec governments. This era is the most meaningful counterpart in recent Canadian history to the trends of the 1990s, and an understanding of its key features provides an important reference point for understanding the last few years.

The Pearson Vision

The man at the heart of this era was the Right Honourable Lester B. Pearson, the Liberal Prime Minister from 1963 to 1968. Any efforts toward asymmetrical arrangements for Quebec were products of the Pearson years, and Pearson's belief that Quebec nationalism could be accommodated. This perspective ended with Pearson's retirement, and in fact seemed to wane following the 1965 election that brought Pierre Trudeau into government.[1] Given Pearson's centrality in this era, it is worth exploring his perspective on Quebec's place in Canada, which in turn motivated his government's position towards Quebec. By definition, the following analysis will focus to a certain degree on federal political leadership, and extensive use will be made of Pearson's memoirs, as well of those of his senior policy advisor, Tom Kent. While such a focus may be misplaced in exploring a number of policy initiatives, this is certainly not the case when discussing the national unity "file" in Canadian politics. While officials, Ministers, and the public all play a role in government decision making, the fundamental direction for any government in Canada in its relations with other governments comes directly from the leader. This is clearly illustrated in the change in federal-provincial relations that occurred when Trudeau became Prime Minister after Pearson; special status for

Quebec was definitely over. The tendency of leaders to drive intergovernmental relations is only intensified by the system of executive federalism that has developed in Canada. As First Ministers became more involved in the intergovernmental process in the 1960s, "matters formerly dealt with at less senior levels of government" came onto their agenda (Smiley 1987, 89). Intergovernmental concerns shifted from the common technical and professional considerations of lower level public servants to the broader policies and partisan politics of First Ministers (Smiley 1980, 96-97). One of the results of this transformation was the shift from conditional grants for very specific purposes, which dominated following the Second World War, to unconditional fiscal transfers to the provinces (Smiley 1987, 89).

Lester Pearson came to office having clearly articulated, in a December 1962 speech to the House of Commons, his belief that Confederation "was an understanding or a settlement between the two founding races of Canada made on the basis of an acceptable and equal partnership..." (Pearson 1975, 67-68, 239). He argued that Canadians had been complacent in responding to the threats of Quebec separatism, and suggested as a response a commission of enquiry, jointly with the provinces, into the "bicultural and bilingual situation [in Canada], our experience in the teaching of English and French, and in the relations existing generally between our two founding racial groups" (68). Pearson's election on April 8, 1963, with a minority government, allowed him to respond to the separatist forces in Quebec, and one of his first actions was to appoint the Royal Commission on Bilingualism and Biculturalism with a mandate "...to

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[1] It is not entirely clear if or when Pearson changed his perspective on accommodating Quebec nationalism. See Peacock's *Journey to Power*, 120-123 for examples of the conflicting messages offered by Pearson and the Liberal Party towards the end of his leadership.

inquire into and report upon the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races, taking into account the contribution made by other ethnic groups" (Canada 1967, 173). This mandate is clearly consistent with Pearson's vision; in fact, there can be little doubt, given the Commission was appointed "on the recommendation of the Right Honourable L.B. Pearson, the Prime Minister" (ibid.) that the underlying premise of two founding races, with Quebec constituting a distinct sociological nation within Canada, was his. Pearson's memoirs clearly state "[t]he French in Canada are a nation in the sense that they are a separate people" (Pearson 1975, 237). The recognition of other ethnic groups in the Commission's mandate appears to be an afterthought; certainly Pearson was of the view that while members of other ethnic groups had made important contributions to Canada, "the Canadian foundation was essentially dual. Those who by choice came to Canada later were expected to fit into one or the other of the two founding groups for language purposes" (Pearson 1975, 241).

The Commission represented an important symbolic recognition of Quebec's distinctiveness and was chaired by André Laurendeau and Davidson Dunton, who led eight other commissioners. In addition to the mandate noted above, the commission was instructed to investigate bilingualism in government departments, report on the role of public and private corporations in promoting bilingualism and biculturalism, and consider with provinces how bilingualism could be taught to Canadians (Granatstein 1986, 248-9). The Commission proceeded to create a significant research organization, held hearings across the country, and the co-chairs met with all of the provincial premiers (ibid., 249-

253). The commissioners reached the same conclusion as Pearson: English Canadians were largely oblivious to the threat being created by Quebec nationalism. In response, the Commission issued a preliminary report with the intention of shaking English Canada's complacency; Granatstein observes that it "achieved the desired shock effect" (ibid., 253). The Commission finally issued the first volume of its report in 1967 (volumes 2-6 were released between then and 1970), to generally favourable reaction (ibid., 254). It recommended that French and English be declared the official languages of Parliament and federal institutions; that New Brunswick and Ontario (and any other province where 10% of the population was the minority language group) become officially bilingual; that bilingual districts be established where the minority group was 10% of the population; that all parents have the right to educate their children in either language; that the national capital be declared officially bilingual; and that the federal government and bilingual provinces adopt an official languages act with a commissioner to enforce it.

Ironically, Pearson was in the process of leaving office when the first volume of the report was published. However, he had already taken measures to increase bilingualism in the public service, a key recommendation of his commissioners. In addition to this intrastate initiative to recognize Canadian duality, he had also tried to implement interstate initiatives that would give meaning to Quebec's distinctiveness, believing the separatist threat could only be destroyed by coming to terms with Quebec's "Quiet Revolution" (Pearson 1975, 238-9). Such policies can be grouped under the philosophy of co-operative federalism, by which Pearson "meant that instead of trying to concentrate power in Ottawa [the federal government] should try to make arrangements

with the provinces for joint undertakings where the constitution allowed, while seeking always to maintain a more or less standard level of services for all Canadians" (Pearson 1975, 238). Pearson considered himself sympathetic to provincial desires, particularly Quebec's, for more control and resources. His government's response was to allow "contracting out" or "opting out" which enabled provinces to opt out of federal programs in areas of provincial jurisdiction and run similar programs themselves while receiving compensation that would be the financial equivalent of what the province would have received for participating in the joint program. Pearson argued that...

> [i]n this manner we might make provision for Quebec to develop *de facto* jurisdiction in certain areas where she desired it more. Although the federal government had to retain intact certain essential powers, there were many other functions of government exercised by Ottawa which could be left to the provinces. By forcing a centralism perhaps acceptable to some provinces but not to Quebec, and by insisting the Quebec must be like the others, we could destroy Canada. This became my doctrine of federalism (Pearson 1975, 239).

This approach was given practical effect during Pearson's tenure as prime minister. All provinces were given the opportunity to opt out of a number of new initiatives; existing policies were also amended to enable opting out. Key initiatives include the creation of the separate Canada and Quebec Pension Plans, the *Established Programs (Interim Arrangements) Financing Act* of 1965, the federal youth allowance, and student loans.

Canada and Quebec Pension Plans

The most visible continuing reminders of the asymmetrical arrangements that were produced in the 1960s are the separate Canada and Quebec Pension Plans. A key part of the Liberals' 1963 election platform was the proposal for an unfunded pension plan. Public pensions had been part of the Liberal Party's election platform since the 1958 general election, and by 1963 had been developed "in more precise detail than any

other measure" proposed by the Liberals (Kent 1988, 256). During the 1963 campaign the Liberals had committed to "sixty days of decision" when a number of key initiatives would be undertaken; in a campaign speech in Vancouver a week before the election, Pearson stated his government would "establish" a contributory pension plan in this period (206-7). So it was that the Canada Pension Plan resolution was placed on the House of Commons order paper on June 19 (Simeon 1972, xv), and Cabinet approved a detailed plan on July 15, 1963 (Kent 1988, 257).

The federal plan came under early attack from two directions. The first was within English Canada where there was considerable hostility in Parliament and the insurance industry to a public pension plan. While most other provinces lacked "interest and expertise in the area," the Government of Ontario had passed legislation extending private pension coverage shortly before the federal election (Simeon 1972, 46, 47). The concerns of English Canada paled, however, in comparison to those coming from the Government of Quebec. Since 1962 Quebec had been studying pensions, an exercise which took on the highest priority with the announcement of the federal initiative (ibid., 45). The result was quick approval by the Quebec government for the development of a public plan more suited to Quebec's needs. Under the constitution, Quebec had a stronger hand than the federal government. Section 94A, enacted with unanimous provincial consent in 1951, permitted the federal government to establish old age pensions, but maintained provincial paramountcy in this area (Simeon and Robinson 1990, 141). Thus if Quebec wanted to create its own pension plan it was in its constitutional right to do so, and the federal government would be powerless to stop it.

On June 23, a unanimous resolution was passed in the Quebec legislature that the province would stay out of the federal pension scheme.

The first federal-provincial discussions on pensions occurred at the July 1963 Federal-Provincial Conference where Ottawa sought to set the stage for a new cooperative relationship with the provincial order of government. Regarding pensions, the meeting was largely one of information exchange (Simeon 1972, 47). The federal government's pension proposal included supplementary survivor and disability benefits, which would require a constitutional amendment; Quebec indicated that it would agree to the amendment only if it could opt out of the national plan. At the next conference, in September, the federal government recognized that Quebec would have a separate pension plan, and hoped that the two could be coordinated. Pensions were again discussed at the November Federal-Provincial Conference, which was dominated by fiscal considerations, and Quebec's demands for a "fundamental reshaping of the federal union" (Simeon 1972, 51). At that meeting, Quebec presented a brief calling for full federal-provincial consultations on economic, tariff, and monetary policy, the right of Quebec to opt out of shared-cost programs with complete compensation, and other matters. "Quebec, with its strong demands, carefully designed proposals, and forceful presentation, was effectively setting the agenda for federal-provincial discussion" (Simeon 1972, 51). While the meeting considered several aspects of the pension legislation, and the federal government expressed flexibility, it ended with Ottawa promising to consider the provincial views and submit a revised proposal (Simeon 1972, 52-53). This resulted in a new proposal being sent to provinces on January 11, 1964, and legislation, Bill C-75, being introduced in the House of Commons on March 14.

The impasse with Quebec over pensions reached its peak at the Federal-Provincial Conference held in Quebec City on March 31-April 2, 1964. At that conference, Premier Lesage announced the details of the Quebec plan, which would have more widely available benefits than the federal plan, with provisions for widows and orphans; more financially generous benefits; a higher contribution rate that exempted the first $1000 of income (effectively making it redistributive); a longer transition period; and perhaps most importantly, would, as a funded pension plan, create a reserve fund which would function as a powerful instrument of provincial development (Simeon 1972, 55). In addition, the Premier of Ontario "strongly hinted that unless the federal plan were truly national (meaning unless it included Quebec) his province would not participate" (ibid.). The result was a conference that could only be described as a failure, as governments failed to reach agreement on any of the outstanding issues. Quebec's pension proposal effectively killed the federal plan, there was no agreement on loans for university students, the extension of family allowances, or on broader issues of fiscal arrangements and the extent to which the two orders of government should occupy various tax fields. Simeon reports that there was a genuine feeling among federal politicians and officials that Canada was at the abyss, and possibly on the verge of break-up (ibid., 56). Following the conference, all of the outstanding issues, which were the result of Quebec's resistance to federal initiatives in areas of provincial jurisdiction, were resolved through bilateral negotiations between the federal and Quebec governments.[2]

Tom Kent and Maurice Sauvé (a relatively junior cabinet minister) negotiated the resolution on behalf of the federal government. Key to the agreement they reached with

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[2] In addition to Simeon's account, see also Chapter 21, "Sixteen Days in April", in *A Public Purpose*, by Tom Kent, for an insider's view.

Quebec was the compromise that both plans could operate but that their terms would have to be identical. Once this principle was established, both the Quebec and federal governments were able to compromise on the other elements of the plans, such as the maturity period for full pensions, the income ceiling, measures to assist low-income Canadians, the pension rate, and agreement to turn 100% of the pension fund over to the provinces (Kent 1988, 282; Simeon 1972, 59). Quebec also agreed to the constitutional amendment that would enable the federal government to offer survivor and disability pensions as part of the Canada Pension Plan. While the details of the plan were negotiated with Quebec, the ability to opt out was to be extended to all provinces. Following the resolution of issues with Quebec, the Prime Minister advised all Premiers of the accord. Provinces reacted positively to the news, despite having been left out of the negotiations, because of the broader coverage, the aversion of federal-provincial conflict, and their gains from the pension fund (Simeon 1972, 59-60). Even Ontario, which had voiced the strongest objections, welcomed the settlement as it realized there was little scope left to affect change to the pension plan and felt it could not wreck the agreement. The federal government began work with Quebec on developing identical legislation that was passed in 1965, and the Canada and Quebec Pension Plans came into operation on January 1, 1966.

Established Programs (Interim Arrangements) Financing Act, 1965

The 1963 Liberal election platform had included a commitment that provinces would be able to receive financial compensation if they wished to opt out of established shared-cost programs (Kent 1988, 296). Opting out refers to the ability of provinces to not participate in federal shared-cost programs initiated in areas of provincial jurisdiction.

Such programs are an exercise of the federal spending power, "the power claimed by Ottawa to spend funds on matters falling outside its legislative jurisdiction" (Petter 1989, 449). The federal government's purpose in spending in areas of provincial jurisdiction, particularly through shared-cost and conditional grant programs, is to influence provincial decision-making. "In other words, it allows national majorities to set priorities and to determine policy within spheres of influence allocated under the Constitution to regional majorities" (ibid., 465). This was particularly the case with the shared-cost programs that developed in the post-war era, and included hospital insurance grants and the categorical welfare programs for the blind and the disabled and unemployment assistance programs to fund welfare. In return for the federal funding, provinces were obliged to meet federal requirements that the funds be spent in a manner approved by the federal government. Federal influence resulted from the federal definition of spending priorities. In defining these priorities, and offering partial grants to fund them, the federal government exerted a strong influence on provincial spending choices, and it is for this reason that the Quebec government pressed for the ability to opt out of federal cost-shared programs with compensation. Financial compensation, either through unconditional cash or tax point transfers, was important not only to avoid taxation without benefit, which would be the result if a province refused to participate in a new federal initiative, but also because "federal occupation of the available tax room for provincial purposes limits the amount of tax room left to provinces, thus restricting the capacity of provinces to initiate policies they favour" (Petter 1989, 465).

Under the federal proposal, the decision between opting out and maintaining cost-sharing for established programs would be financially neutral; there would be no

financial advantage to either alternative. Implementation of this commitment was a major agenda item for the Federal-Provincial Conference of March 31 – April 2, 1964, that took place in Quebec City. While it was, in the assessment of Tom Kent, one of the few topics for which the federal government had adequately prepared, there was still no agreement at the end of the conference (273). In the negotiations that followed, the federal government's goal was for Quebec to agree that for an interim period, the province would maintain the established programs without change after taking over formal responsibility (Kent, 277). An agreement was reached on all points, and was agreed to by the Quebec cabinet on April 15, and the federal cabinet on April 16, after which it was shared with the rest of the provinces (Kent 282-3). The 1965 enactment of the *Established Programs (Interim Arrangements) Financing Act* was based on these provisions, and enabled the provinces to contract out of certain established grant-in-aid programs with full fiscal compensation. They could either continue to take federal grants for part of the cost of hospital insurance, old age assistance and related welfare programs, health grants, and vocational training, or a tax transfer would be affected, with the provinces levying their own taxes and federal tax reduced commensurately (Kent 296; Simeon and Robinson 1990, 199). While these provisions were made available to all provinces, they were, like the pension plan, only taken by Quebec. Today's so-called "have" provinces declined to take advantage of these arrangements for various reasons. Ontario, while acknowledging problems with restrictive conditions in shared cost-programs, was not prepared to abandon the grants system entirely (Canada 1964, 25-26). B.C. would tolerate the grants system until the federal government vacated all fields of direct taxation in favour of the province (ibid., 70-71), and Alberta, while raising

concerns about clarifying federal and provincial roles and responsibilities, had as late as 1962-63 received equalization, putting it in the ranks of the have not provinces (Perry 1997, 123). As such, the province was likely unwilling to gamble that own source taxation would outpace direct cash transfers from the federal government.

Youth Allowances and Student Loans

Caught up in the debate over pensions and opting out of existing federal programs were the federal government's initiatives on youth allowances and student loans. These formed another key plank in the 1963 Liberal election campaign, under the campaign heading "Canada Needs Trained Minds" (Kent 1988, 375). As part of this campaign commitment, the Liberals sought to extend Family Allowances and provide federally guaranteed loans to university students. Since its introduction in 1945, the main requirement for eligibility for family allowances "was that the child be 'under sixteen'" (Perry 1989, 740). The federal government proposed to provide youth allowances to families with 16 and 17 year old children who were disabled or attending school. The federal government also committed to a program of federal loan guarantees for post-secondary students. Simeon and Robinson put these policies in the context of international economic changes that "required that education and manpower policies be recast to facilitate more rapid and effective economic adjustment (Simeon and Robinson 1990, 199). The key issue for the federal government was coordinating these proposed programs with existing provincial initiatives: Quebec already had a Schooling Allowance for 16 and 17 year olds (Perry 1989, 740), and Quebec and other provinces also had loan programs in place (Kent 1988, 274).

Again, the Federal-Provincial Conference in Quebec in 1964 was pivotal, as the federal proposals were on the agenda for discussion. Like every other aspect of the conference, there was no agreement at its conclusion. As with the creation of Established Programs Financing, the solution was part of the negotiations that ended the impasse of the Canada Pension Plan proposal. In the end it was agreed that the federal programs would go ahead across Canada, except in Quebec. The federal Youth Allowance Plan was introduced in 1964, paying a flat $10 a month for all eligible children in every province except Quebec (Perry 1989, 740). In that province, the provincial government would receive full fiscal compensation from Ottawa. In the area of student loans, Canada and Quebec agreed that the federal government would offer equal fiscal compensation for any province that chose to rely on its own loan program. Under the 1964 *Canada Student Loans Act*, a contracting-out province would receive compensation proportional to its share of the population aged 18 to 24 (Perry 1997, 218). This compensation would take the form of cash payments. Again, the Quebec government had succeeded in opting out of a new federal program, and was the only provincial government to do so.

Tax Abatements and Equalization

Final elements that defined the evolution of Canadian federalism in the 1950s and 60s were tax abatements and equalization. Unlike the previous examples, however, the practice of tax abatements did not begin in the 1960s, nor were they undertaken simply to respond to the demands of Quebec. Tax abatements refer to the federal practice, following the Second World War, of periodic reductions in the federal tax burden in certain fields (primarily personal and corporate income taxes and estate taxes), only for that same amount of tax revenue to be collected by the provinces. Taxpayers saw no

difference in their tax bills; provincial governments simply had increased revenues without relying on federal transfers. Tax abatements were made to counter the high degree of concentration of revenue raising capacity with the federal government that had occurred during the Second World War. In 1941 the federal government took over the personal and corporate income tax fields to finance the war effort. In return for their foregone tax revenues, the provinces received from Ottawa the amount the taxes had netted in 1940, beginning the "tax rental" system (Simeon and Robinson 1990, 107). Agreements were negotiated to extend the tax rental system in 1947 and again in 1952 (146). Quebec remained outside the agreements, foregoing the revenue until 1954, when it levied its own taxes in the same field, resulting in double taxation (147). The St. Laurent government responded by offering to reduce federal taxes by 10% for all provinces that had not signed the rental agreements. All provinces found these "tax abatements" attractive, and this system was formalized in the 1957 tax collection agreement, ending the *de facto* special status briefly enjoyed by Quebec since 1954. In 1952, the tax rental system had been implicitly redistributive as the criteria for calculating the transfers – population and the rate of national economic growth – were unrelated to provincial tax bases (146). With tax abatements instead of rental payments, this was lost; the federal government introduced equalization payments to ensure the fiscal capacity of all provinces, regardless of their tax base (147). In 1962, tax rental agreements came to an end, with all provinces passing their own tax legislation while the federal government played the role of collection agent (except in Quebec) (195). This measure was combined with additional federal abatements and changes to the equalization standard. Under the Pearson government tax abatements were again discussed, and as part of the

March 1964 deal it was agreed that the provincial share of income tax would rise to 24% by 1966. Unlike the other initiatives, which were made available to all provinces, but targeted at Quebec, tax abatements were for the benefit of all provinces in the federation. Tax abatements, while not an example of asymmetrical arrangements in the federation for Quebec, are crucial to understanding the nature of federalism in the 1960s.

Federalism in the 1960s

If the pension plans, EPF, opting out of the Student Loans plan, and the expansion of Family Allowances were the key asymmetrical initiatives of the cooperative federalism of the Pearson era, what do they tell us about Canadian federalism in the 1960s? Five key features are apparent. These are: recognition of a legitimate provincial role, the expansion of the state, the power that nationalism gave to the government of Quebec, equality of the provinces (in principle), a belief that separatism could be addressed by accommodating Quebec, and a general trust between governments, particularly between the federal and Quebec governments. Acknowledging the provincial role is noteworthy both in the context of the 1990s, as well as in comparison to the decades preceding the 1960s. As noted in Chapter One, a centralizing vision of federalism had, certainly in Ottawa and many intellectual circles, become ascendant in the years following the First World War, particularly during the Depression. Provinces were seen as an unfortunate anachronism that would frustrate the federal efforts to implement Keynesian economic management and build a coherent welfare state. In this light, the approach of the Pearson government was a significant change, and the memoirs of Tom Kent highlight the perspective that he and Pearson shared on this matter.

> Whatever the theoretical division of powers between federal and provincial jurisdictions, there could be no clear separation in practice. The wide-ranging activities of government were too interdependent... It followed that federal provincial-relations were no longer a matter, even primarily, of ensuring that each layer of government was free and able to be effective in its jurisdiction. *Respect for jurisdiction remained essential*, but as a base for making possible the consultation and co-operation necessary in order to ensure that what federal and provincial governments did in their respective spheres would meld in a mutually supportive way into policies and programs that could operate beneficially for the country as a whole (Kent 1988, 268).

In part, this was driven by the simple recognition that provinces had sufficient power under the Constitution to frustrate most efforts at economic management taken by Ottawa (Kent 1988, 270). While this approach was certainly different, it did not mean unbridled provincial power. Provinces still had to negotiate for tax abatements. As well, the method of funding chosen by the federal government – conditional grants under shared-cost programs – was relatively intrusive. Nonetheless, cost-shared programs did have the practical effect of strengthening provincial governments as they would design, and perhaps more importantly, deliver the programs to their citizens. This would only reinforce the salience of provinces in the eyes of Canadians. The combined effect of tax abatements and to a lesser extent cost-sharing was to provide practical meaning to the general belief of the Pearson government that the provinces had an important role to play in the federal system, and one that the federal government could not wholly usurp.

Part of the reason the Liberals felt they could respect a role for the provinces was the fact that the 1960s were a time of massive government growth as the Keynesian welfare state was developed. Most importantly, the demand for growth was in areas of provincial jurisdiction. Again, Kent's perspective is instructive.

> With a rapidly growing population, with rising affluence and the advance of technology, with the move from rural to urban living, the mounting social needs

> were for education and urban development, for housing and public health facilities, for roads and urban transit, for environmental protection and social security: for services that were, solely or primarily, provincial responsibilities under the constitution. Canada's development required that the provinces, and through them the municipalities, should have more financial resources (Kent 1988, 268).

Practically, it would have been difficult for the federal government to implement such a vast array of programs in areas of provincial jurisdiction, although it likely could have been done with the financial resources that were available to Ottawa at that time. However, there also seems to be an implicit belief in this passage that suggests that provinces would undertake these initiatives if they had the financial wherewithal. The federal government was not stricken by a fear that the transfer of tax room to the provincial government would eventually find its way into income tax cuts. Instead, there was confidence on the part of the federal government that the initiatives desired by Canadians would be undertaken by the provincial governments that had constitutional responsibility. This is hardly surprising, given that provincial governments are every bit as sensitive to public demands as the federal government. Nonetheless, it is a significant feature of the era. Because the federal government was confident that the building it desired would be undertaken by the provinces, it was comfortable in ceding tax room to them, and developing unconditional equalization grants. Simeon and Robinson argue that "[t]aken together, tax sharing and equalization underlined a central premise of cooperative federalism: there would be no assumption that the expanded role of the state would automatically accrue to the central government, or to the one with the greatest tax revenues."

A third key feature was the power that rested with the Government of Quebec because of nationalist forces within the province. This point should be clear from the

preceding overview, but is worth noting explicitly. In all cases, the federal government sought to address the jurisdictional concerns raised by Quebec. However, these concerns were not seen by the federal government as simply the argument of a provincial government trying to maintain or enhance its institutional status (as might have been the case with the other provinces), but rather were understood as the legitimate demand of a government that was controlled by a sociological nation within Canada. As a result, the Liberal government included elements in its election platform, such as the Royal Commission on Bilingualism and Biculturalism and opting out, as means to respond to Quebec nationalism. When difficulties erupted over Quebec's jurisdictional concerns, they were not resolved in a multilateral forum with all provinces present (which would only have bogged things down). Instead, the federal government undertook bilateral negotiations with Quebec to resolve the impasse, and then advised the other provinces of the deal that had been struck and how it would apply to them. A striking feature of the era then is the power given to Quebec because of the nationalist forces, a factor that cannot be underestimated.

Trying to address Quebec's demands, while still implementing its governing program, presented the federal government with a serious challenge. The federal government wanted to lead on a number of social policy initiatives, while simultaneously respecting the equality of the provinces and providing *de facto* jurisdiction to Quebec (to paraphrase Pearson). These contradictions were resolved, in part by the relaxation of conditions on the federal grants, but more importantly by formally extending opting out to all provinces when none other than Quebec was expected to take advantage of it. This aspect of asymmetrical federalism can lead to contradictory analyses. On the one hand, it

presents itself almost as a form of chicanery, in the sense that something is being done for the benefit of Quebec, but not being acknowledged as such. This is certainly not an unjustified analysis, given that the negotiations that resulted in the Quebec pension plan, finalized EPF, and enabled Quebec to opt out of the Student Loans and the extension of Family Allowances were all the result of intensive bilateral negotiation between the Quebec and federal governments to meet the needs of Quebec. On the other hand, these initiatives were then legitimately made available to the other provinces. This is the key point. Had any other province chosen to opt out in the same manner as Quebec (and in the case of the Canada Pension Plan, Ontario's participation was a cause of great anxiety for the federal government) they could have. Thus, the provisions that would have enabled opting out by other provinces, particularly those in the pension legislation or Established Programs Financing, are important as they indicate a general belief in the importance of the formal equality of the provinces, in spite of a move to asymmetrical arrangements. It was possible for the federal government to square this circle by making the equality contingent on the option to opt out (all provinces had that choice), rather than contingent on whether any of them actually did it. Thus Quebec could opt out of a number of shared cost programs under Established Programs Financing because the federal government made it an option available to all jurisdictions. While this may be viewed as little more than a formality, it is important because the underlying principle – equality of the provinces – is respected.

Such arrangements were considered necessary as a response to Quebec nationalism. While this point has been made already, it is worth putting in a slightly different context. There was a real belief in the federal government of the time that

Quebec nationalism could be accommodated, and that giving policy flexibility to Quebec would ultimately defeat the nationalist forces in the province. Again, Pearson's memoirs are instructive on this point. "The intensity of [the nationalist sentiment behind the Quiet Revolution] made it clear that if we failed to contain and destroy separatism by coming to terms with the Quiet Revolution, that if we failed to treat Quebec as the heart of French culture and French language in Canada, as a province distinct in some respects from the others, we would have the gravest difficulty in holding our country together" (Pearson 1975, 238-9). The solution, then, was "for Quebec to develop *de facto* jurisdiction in certain areas where she desired it most." The federal response to Quebec nationalism was not to point out the dangers and potential hazards of separation, or to necessarily make every effort to make itself more visible in Quebec. Rather, providing flexibility to the provincial government was seen as reasonable response to the nationalist forces.

Part of the reason for this response is undoubtedly political. The Pearson government felt a need to help the Liberal party and government of Jean Lesage in Quebec. The desire to help the provincial party has not always been a priority for the federal government. The fact that it was in this case indicates the final characteristic of the era: the level of trust that existed, particularly between the federal and Quebec governments. The negotiations that resolved the impasse resulting from the Quebec conference could not have been undertaken without a high degree of trust between the First Ministers and their respective envoys. Further, a gentleman's agreement existed that Quebec, after opting out of a number of federal programs under the *Established Programs Financing Act*, would not change them for two years. In addition, this notion of trust is implicit in the federal government's belief that provincial governments would

develop the programs that the federal government believed were required in the 1960s. While there is a simple logic that the voters would let the provinces know this, a degree of trust was still involved. This may in part have stemmed from the networks that had developed among officials in various policy sectors, who shared "common values and [spoke] a similar vocabulary as a result of common training in a particular profession or discipline" (Dupré 1985, 5). Dupré asserts that in the cabinet system that characterized governments into the 1960s, where Ministers were relatively autonomous, this trust would "percolate up" to the political levels. The resulting trust among political leaders represents a fundamental feature of the era.

The asymmetrical arrangements of the 1960s were indeed the product of a unique era. The federal government simultaneously sought to accommodate the growing responsibilities of the provincial governments, as well as respond to the nationalist forces gaining power in Quebec by pursuing a policy of cooperative federalism. The result was increased funding for the provinces, either in the form of tax abatements or through new shared-cost programs that enabled the federal government to provide some direction to the development of the provincial welfare states. Quebec justifiably viewed shared-cost programs as an intrusion into provincial jurisdiction and sought, successfully, to opt out of a number of major shared-cost programs. The federal government provided this freedom to Quebec by formally extending the option to all other provinces, which declined to take it. This delicate balance of provincial equality and asymmetry is perhaps the defining element of the era, despite the fact history tends to view the period as a major expansion of special status for Quebec. It will be interesting to see if history

reserves the same judgment for the development of asymmetrical arrangements in the 1990s, which will be the subject of the following chapters.

Chapter Three: Dualism in the Early 1990s

The 1990s share an important similarity with the 1960s, as the federal government's efforts to respond to Quebec's demands for recognition of the dualist vision characterized both decades. The focus on this issue in the early 1990s is well known to most Canadians, as the very public constitutional discussions that resulted in the Charlottetown Accord dominated the early part of the decade. Additional initiatives from this period include the non-constitutional Canada-Quebec immigration accord of 1991, and the quasi-constitutional initiatives announced by the federal government following the 1995 sovereignty referendum. While all of these measures sought, to some degree, to recognize a dualist vision of Canada, there were important variations in approach and result. The immigration accord was a bilateral exercise in interstate federalism, the Charlottetown Accord was a multilateral constitutional amendment in which the dualist conception of Canada, in direct competition with competing visions, was manifested primarily through intrastate devices, and the post-referendum initiatives were strictly a federal exercise, accompanied by interstate arrangements affecting all provinces. Notwithstanding the variety of different approaches, two conclusions seem clear. The early 1990s were characterized by the continuing need to recognize the dualist vision of Canada; however, the period illustrates the difficulties of pursuing this vision in a constitutional framework. While the Charlottetown Accord, the dominant initiative of the era, failed, it remains instructive for what it reveals about support for the dualist vision of Canada. Not surprisingly, constitutional initiatives have been abandoned since 1995 for more successful non-constitutional approaches.

Canada-Quebec Accord Relating to Immigration

Following the defeat of the Meech Lake Accord, immediate efforts were taken by the government of Brian Mulroney to implement the immigration provisions of the Accord, at least as they related to Quebec. Under the Accord, the federal government had agreed to negotiate an agreement at the request of any province relating to immigration into that province, an example of interstate federalism that would enhance the power of the local majority at the expense of the national majority. Such agreements would effectively be entrenched in the constitution, as amendment would only be possible with the consent of both the federal and provincial governments. This element of Meech Lake was extended to all provinces, but was specifically targeted at Quebec. In fact, the 1987 Constitutional Accord stated that such an agreement would be entered into with Quebec as soon as possible. This agreement would incorporate the principles of the 1978 Cullen-Couture agreement on immigration, guarantee Quebec a proportionate share of immigrants to Canada, and see the federal government withdraw from immigrant settlement services in Quebec, with reasonable compensation to the province for assuming the new responsibilities.[1] With the defeat of Meech Lake, the constitutional protection that would have been afforded such an agreement was lost. Nonetheless, the federal government quickly moved to reach an immigration agreement with Quebec.

The *Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens* was signed February 5, 1991, and came into force on April 1. Under the Accord, Quebec would receive a share of immigrants to Canada proportional to its

[1] The Cullen-Couture Accord represents a significant departure from Pierre Trudeau's traditional approach towards Quebec, which vehemently rejected any special status for the province. Ken McRoberts suggests the agreement resulted in part from the election of the PQ government in 1976, which caused the Trudeau government to reassess its national unity strategy (McRoberts 1997,148, 152).

population, with the potential to exceed this amount by 5% (Canada 1991a, 3). Continuing the Cullen-Couture Accord, Quebec would have sole responsibility for the selection of immigrants destined to Quebec, while admission of all immigrants would remain the sole responsibility of the federal government (who agreed to admit those immigrants selected by Quebec, as long as they weren't inadmissible on other grounds) (ibid, 4). The province would also have responsibility for selecting investor-class immigrants, and would gain authority for assisted relative admissions, so that both the federal and Quebec governments would develop criteria in this area (Canada 1991b, 2). The federal government also agreed to withdraw from immigrant and refugee settlement services, transferring $332 million to Quebec in the years 1991-92 through 1994-95 (Canada 1991a, B). These funds were a significant element of the Agreement, as their future growth potential was not only a function of Quebec's share of immigrants and the proportion of non-Francophone immigrants, but was also tied to federal fiscal growth. This created the potential for Quebec to get a disproportionate share of federal funds for the immigration settlement. This in fact did occur, so that by 1994 Quebec had, on average over the previous three years, received approximately 32.5% of annual settlement funding while receiving only 17% of the newcomers to Canada (Jenkinson 1994, 8). The Liberal government of Jean Chrétien sought to minimize this special treatment by increasing the funding provided by the federal government for settlement services. In March 1997 the federal Minister of Citizenship and Immigration announced an additional $63 million for settlement activities to be divided among the provinces – except Quebec – primarily based on the number of immigrants destined to each province.

The new government sought to temper the special status that had been created for Quebec through the Accord (Canada 1997b,1).

They also sought to limit this distinctiveness by signing immigration agreements with other provinces. The Mulroney government did not sign similar agreements with any other provinces, leaving the 1991 immigration accord as a key example of an intergovernmental initiative to address the dualist vision of Canada. It was only with the election of Jean Chretien's Liberal government that similar agreements were signed with British Columbia, Saskatchewan, Manitoba, New Brunswick and Newfoundland. None of these agreements are as comprehensive as the Canada-Quebec Accord (Vander Ploeg 2000, 2), although the B.C. agreement comes closest, providing that province with funds and responsibility for settlement services, a greater role in planning, and an agreement to attract business immigrants (Canada 2000a, http://www.cic.gc.ca/english/about/policy/fedprov-e.html). At that time the federal Minister acknowledged that the Accord with Quebec was unfair to other provinces, and reportedly stated, "Not being able to change that binding agreement, I'm working to close the gap with other provinces" (Rinehart 1998, B1). Despite this desire to close the funding gap, evidenced by the additional funding for settlement services, the federal government nonetheless is unwilling to sign agreements that would give other provinces the same influence over immigration as is currently enjoyed by Quebec. The Government of Alberta for example, has sought over the past fifteen years to replicate the immigration provisions (in both the Cullen Couture Agreement and the 1991 Accord) for Alberta.[2] The federal government has rebuffed these efforts. There is a clear sense in Ottawa that when it comes to immigration, Quebec is most assuredly not like the other provinces. As a result, an expanded role supporting a

dualist vision of Canada has been afforded Quebec under section 95 of the Constitution, which defines immigration as an area of concurrent federal and provincial jurisdiction.

The Charlottetown Accord

The Canada-Quebec Accord was signed against the backdrop of reviving interest in constitutional recognition of the dualist vision. It is possible that additional non-constitutional methods to deal with Quebec's demands would have been considered; however, this possibility was pre-empted by the revival of the constitutional process. In September 1990, the Quebec National Assembly unanimously approved the creation of a Commission on the Political and Constitutional Future of Quebec (Pal and Seidle 1993, 149). The Commission was chaired by business leaders Michel Bélanger and Jean Campeau, and included 18 Members of the National Assembly, 3 federal Members of Parliament, and 15 members from other sectors of Quebec society (including the co-chairs). Simultaneously, the Quebec Liberal Party was examining its own constitutional position, through a committee chaired by former party president Jean Allaire. As the Bélanger-Campeau commission prepared to hold hearings, pressure grew within the federal government for a national consultative initiative. The result was the Citizen's Forum on Canada's Future, chaired by Keith Spicer, which was appointed by the federal government in November 1990. (Pal and Seidle 1993, 150). The work of the Spicer Commission, whose mandate did not include the word "constitution", was, in the assessment of Leslie Pal and Leslie Seidle, "obviously intended to allow Canadians to 'let off steam' about broader issues that simmered below the surface during the Meech Lake round" (Pal and Seidle 1993, 150). In creating the Spicer commission, the federal government sought to address the participatory impulse implicit in the rights-based vision

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[2] Based on the author's discussions with Alberta Learning officials.

of Canada. While not explicitly focused on rights issues, this process acknowledged that the Constitution is not the exclusive property of government and that citizens must have a greater role. The Spicer Commission would report just before Canada Day in 1991, recommending recognition of Quebec's distinct society (State of the Federation 1991, 237). By this time, however, Quebec had effectively set the constitutional agenda for the rest of the country. The Allaire report was released on January 29, 1991, recommending a "Canada-Quebec structure" closely resembling sovereignty association; the Quebec Liberal party adopted the report in March (Pal and Seidle 1993, 149-50). This was followed by the report of the Bélanger-Campeau commission, which called for a referendum on sovereignty in June or October 1992. The National Assembly approved this process in June 1991. "Thus, by mid-1991, initiatives within Quebec had set deadlines as well as a threshold for assessing an eventual constitutional 'offer'" (Pal and Seidle 1993, 150). These bars, at a minimum, required a strong endorsement of the dualist vision of Canada, as the alternative appeared to be separation.

The federal government responded with the release of *Shaping Canada's Future Together*, its new constitutional proposals, in June 1991. This effectively re-launched the constitutional negotiations and illustrates the extent to which Quebec nationalism, and the possibility of separation, as in the 1960s, provided a powerful tool to the Government of Quebec. The federal proposals were subject to revision, based on the input received by the Special Joint Committee of the Senate and House of Commons on a Renewed Canada (chaired by Senator Claude Castonguay – later replaced by Gérard Beaudoin – and Dorothy Dobbie, M.P.) that was to report in March 1992, and was part of "a much broader consultative process, one without parallel in Canadian history" (Pal and Seidle

1993, 152). During 1991 and 1992, every province and territory established some form of consultative body to examine constitutional issues.[3] These processes were motivated by the participatory impulses of the rights-based constitutional vision. Russell suggests that the efforts of the Beaudoin-Dobbie commission were a success because "the country was ready for them," an assessment that can safely be extended to the various provincial and territorial efforts (Russell 1993, 177). The country had been preoccupied by the Meech Lake Accord, particularly as political leaders fought to save it, for well over a year. Canadians were knowledgeable on constitutional matters and wanted to be heard. A key element of the Beaudoin-Dobbie commission was a series of constitutional conferences that took place across Canada, and it is worth noting that the first conference, dealing with the division of powers, seemed to reveal a more accommodating attitude towards Quebec. The conference's executive summary stated, "There was a strong view that asymmetry in the take-up and administration of federal and provincial powers by Quebec, and where desired, for the other provinces and territories, was not a problem" (quoted in Russell 1993, 178).

The Beaudoin-Dobbie report was released on March 1, 1992. Shortly after that the Right Honourable Joe Clark, the federal Minister of Constitutional Affairs, met with provincial and territorial Ministers to discuss the report (Canada 1992a, i). All jurisdictions agreed to make best efforts to reach agreement by the end of May, a deadline that was subsequently extended into June and then July. These meetings proceeded with all provinces, except Quebec, the territories, and representatives of four Aboriginal organizations (the Assembly of First Nations, the Native Council of Canada,

[3] For a complete listing of the Federal, Provincial, and Territorial consultative bodies see Appendix 5.2 of Pal and Seidle, 1993.

the Inuit Tapirisat of Canada, and the Métis National Council). It was only after an agreement had been reached among these participants that the Government of Quebec participated in a number of First Ministers meetings chaired by the Prime Minister. These meetings culminated in the *Consensus Report on the Constitution*, or Charlottetown Accord, that was signed by First Ministers on August 28, 1992. Before considering the Accord itself, two features of this negotiation process merit attention. The first is that the Accord was essentially that of English Canada (Russell 1993, 197). Quebec had been absent from the crucial negotiations that produced the agreement considered by First Ministers. To be sure, the question of what would be required to win the support of both the government and citizens of Quebec was a factor for most of the delegations, who recognized that the new agreement would be judged against the failed Meech Lake Accord. The fact remained that Quebec's interests were not directly heard at the negotiating table until the deal had nearly been finalized. As a result, Premier Bourassa had very little room in which to manouevre when he joined in the First Ministers' discussions. This is closely related to the general shift in government leadership from the Meech Lake process, where...

> ...the dominant forces in shaping the intergovernmental agenda and driving it forward were Quebec and the Mulroney government. But now, in the so-called Canada round, Quebec was not even at the table until the very end and the federal government was there without any great sense of commitment to the process or a clear agenda of its own (Russell 1993, 195).

In other words, the traditional supporters of both the dualist and centralizing visions of federalism were neutralized. Quebec was not at the table and the Mulroney government had never shown a great deal of interest in the vision of centralizing federalism, and certainly seemed only to want to "cut a deal" during the Charlottetown negotiations. The

contrast to the primary role of the Canada and Quebec governments in the 1960s could not be greater, and this played a key part in defining the final shape of the ill-fated Accord.

The first element of the Accord was the "Canada Clause" that expressed fundamental Canadian values and would guide the courts in their interpretation of the Constitution, including the *Charter of Rights and Freedoms*. The clause would have been included as section 23 of the *Constitution Act, 1867*, and would have recognized: Canada as a democracy committed to the rule of law and a parliamentary and federal system of government; the right of Aboriginal peoples to ensure the integrity of their societies; a commitment to racial and ethnic equality; respect for individual and collective human rights; the equality of men and women; the vitality and development of official language minority communities; and equality of the provinces. Most important, for current purposes, the Canada Clause included the following as a fundamental characteristic: "Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition" (Canada 1992a, 1). Further the new section 2(2) affirmed the role of the legislature and Government of Quebec to preserve and promote the distinct society of Quebec (ibid, 2).

Symbolically, the Canada Clause was of great importance. The constitution would clearly recognize the distinctiveness of Quebec. More importantly, the role of the Government and legislature of Quebec in preserving and promoting the distinct society was also affirmed. While political elites demonstrated a willingness to include these words in the 1992 constitutional amendments, their commitment to them is unclear when considered against other elements of the Canada Clause that would surely provide a brake

on meaningful implementation of the dualist vision. One issue is the nature of the clause itself, which buried distinct society recognition among seven other "fundamental characteristics" of Canada. Quebec's distinctiveness would not be "the" defining feature of Canada, but one of several. Further, two of those characteristics particularly seem to challenge the value of the distinct society clause. The confirmation of the equality of provinces is the first of these; in fact it's not immediately clear how this clause squares with the affirmation of the Government and legislature of Quebec's roles to preserve and promote the distinct society. As with the Meech Lake Accord, the affirmation of this role provides justification for Quebec to exercise powers unavailable to other provinces. In other words, two fundamentally antagonistic constitutional visions of federalism had been included in the Charlottetown Accord.

Given the basis of Quebec's distinct society in the French language and culture, the commitment by all governments to the vitality and development of official language minority communities (i.e. English language communities in Quebec) also seems to challenge any real power that may have been gained in the recognition of Quebec as a distinct society. Official language minority communities have tended to look to Ottawa for protection, particularly in the face of provincial intransigence in maintaining their rights. In Quebec, this has had the perverse effect of conceptually putting the federal government on the side of English Quebeckers, in opposition to Quebec's efforts to protect the French language on behalf of the Francophone majority. However, the Accord went beyond the existing recognition of minority language rights in the *Charter of Rights*, as governments committed to the vitality and development of minority language communities. It is not clear how the Quebec government would balance this

obligation with their responsibility to "preserve and promote" the distinct society in that province. Ultimately, the Government of Quebec never had to navigate this course, nor did the Canadian judiciary, so the ultimate value of the distinct society clause in the Charlottetown Accord remains unclear. The contradictory forces within the clause seem to suggest, however, a weak commitment to even symbolic recognition of the dualist vision of Canadian federalism.

In the draft legal text of the Accord, the Canada clause was followed by the Senate reform proposals. The Senate would have been elected (either directly by Canadians or indirectly by their provincial legislatures), would not have functioned as a confidence chamber, and, in most cases, would have triggered joint sittings with the House of Commons when it defeated legislation from the Commons (Canada 1992a, 4-6). Two features of the proposed Senate are relevant to this discussion, for different reasons. The first is the composition of the Senate: the Accord proposed a sixty-two-member Senate, with six Senators from each province, and one each from the territories. The much-vaunted "E" – equal – had been achieved. The vision of provincial equality, which does not sit easily with dualism, was the motivating vision for Senate reform. However, efforts were taken to give the Government of Quebec some comfort with this section of the Accord, which had been largely settled when Quebec joined the negotiations. First was the plan for a double majority for bills that materially affect French language or French culture. Such Bills would require the approval of both a majority of Senators and a majority of the Francophone Senators voting (who would declare themselves as such upon entrance to the Senate). The House of Commons would not be able to override the defeat of a bill in this category by the Senate. While this clause suggests support for the

distinct nature of Quebec, it must be recognized that Francophone senators would not come exclusively from Quebec. They would also come from all of the other provinces and territories, and as such would be representatives of official language minority communities. It is unclear how the double majority dynamic would have worked in the Senate, but it is certainly plausible that the interests of Quebec Francophones and those Francophones outside of the province would have diverged.[4] Nonetheless, the double majority is an example of intrastate recognition of Canadian duality.

Quebec's agreement to the Senate reform package was secured by a change in the composition of the House of Commons. While the distribution of seats in the lower chamber was to be determined by representation by population, Quebec was to be entitled to no fewer than 25% of the total numbers of members in the Commons in perpetuity. This trade-off represented a further recognition of Quebec's distinctiveness through an intrastate mechanism, but it was an initiative that came with a heavy price. While the Senate explicitly rejected representation by population, the Commons was supposed to embrace it. This tension, widely understood by most Canadians as the model in the United States, was thrown out of balance by the guarantee of 25% of the Commons seats for Quebec. In the public debates leading to the referendum in October 1992, this was one of the most contentious issues among English Canadians. Peter Russell argues, "Nothing alienated voters in the rest of Canada so much as the guarantee to Quebec of 25 per cent of the seats in the House of Commons" (Russell 1993, 226). Polls two weeks before the referendum showed majorities outside of Quebec ranging from 71 to 89 per cent against this provision (ibid).

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[4] This does not even begin to consider how such a Senate might have worked within the context of the strong party system that currently exists in the Canadian Parliament.

The Charlottetown Accord contained another element of the Meech Lake Accord in the agreement on the Supreme Court of Canada. The Court would be entrenched in the Constitution as the general court of appeal for Canada, and three of the nine members would be admitted to the bar of Quebec (Canada 1992b, 25). Further, the federal government would name judges from lists submitted by the provincial and territorial governments. Finally, it was acknowledged that the role of Aboriginal peoples in relation to the Court would have to be dealt with at a future First Ministers' Conference on Aboriginal issues. As with the Meech Lake Accord, the designation of three Quebec judges, practiced in civil law, simply entrenched an existing provision of the *Supreme Court Act*; no substantive change would result. However, it is again indicative of the effort by Canadian political elites to respond to Quebec's demands, and recognize a dualist vision of Canada, within the institutions of the central government.

The Constitution's amending formula was again the subject of proposed change, as during the Meech Lake round. Amendments to the provisions of the Constitution relating to the Senate, Quebec's guarantee of 25% of the House of Commons seats, and matters relating to the Supreme Court of Canada (with the exception of the nomination and appointment process, which would still be governed by the general – 7/50 – procedure for constitutional amendments) would all require unanimity (Canada 1992a, 19). Also, the creation of new territories and extension of existing provinces into the territories would no longer be subject to the general amending formula; instead, the federal government could create a new province after first consulting with the provinces, and the limits of a territory could only be altered by the House of Commons with the agreement of the territory. The effect was to leave the general amending procedure with

no application but for the method of selecting judges of the Supreme Court. Everything else that fell under the Constitution's amending formula would be subject to unanimity. As with the Meech Lake Accord, Quebec's demand for a constitutional veto had simply been extended to all other provinces. In doing so, this provision not only failed to recognize a dualist vision of Canada, but instead strengthened the principle of equality of the provinces through an interstate mechanism. It also failed to provide Canada with a workable amending formula, for while the 7/50 formula has proven a difficult threshold to meet, unanimity guaranteed the Canadian Constitution would have changed very little after 1992.

Like the demand for a constitutional veto, Quebec's demand for opting out of federal programs in areas of exclusive provincial jurisdiction was met by applying the right to opt out to all provinces. Again, the vision of equal provinces would have been strengthened at the expense of the dualist vision. As noted in the previous chapter, provinces, particularly Quebec, have sought to limit the federal spending power because it effectively directs provincial governments in areas of their own jurisdiction. This creates an untenable position in Quebec where these jurisdictions are seen as the cornerstone to maintaining the Quebec nationality. The *Constitution Act, 1867* would be amended so that the federal government would provide reasonable compensation to the government of a province choosing not to participate in a national shared-cost program established by the federal government in an area of exclusive provincial jurisdiction. This compensation would be provided if the province "carries on a program or initiative that is compatible with the national objectives" (Canada 1992b, 27). It was also agreed that a framework would be included in the constitution to guide the use of the federal

spending power, ensuring it would only be used if it would: contribute to the pursuit of national objectives; reduce overlap and duplication; not distort and respect provincial priorities; and ensure equality of treatment of the provinces while respecting their different needs and circumstances. Again, Quebec's distinctiveness was not an issue in this clause; all provinces could opt out. Quebec's demand had been met, although without providing special status. In fact, these provisions again supported a vision of equal provinces.

The Accord sought to clarify federal and provincial jurisdiction in a number of fields, again building on the demands (in most cases) of Quebec (Canada 1992a, 10-13). The federal government would negotiate agreements with all of the provinces relating to immigration. Labour market development and training would be identified in Section 92 of the *Constitution Act, 1867* as matters of exclusive provincial jurisdiction, and the federal government would withdraw from any or all training activities and labour market development activities (except for unemployment insurance) at the request of any province. The federal government would retain responsibility for unemployment insurance, and there would remain a federal role in establishing national policy objectives for the national aspects of labour market development. Provinces would have jurisdiction over culture in the provinces, with the federal government retaining its role in relation to national cultural institutions (such at the CBC and the Canada Council). The constitution would also affirm that urban and municipal affairs, tourism, recreation, housing, mining, and forestry (the so-called "six sisters") were matters of exclusive provincial jurisdiction, and that the federal government would, at the request of any province or territory, negotiate an agreement for federal withdrawal from the policy field (in whole or in part).

Finally, the federal government would negotiate an agreement at the request of any province or territory for the purpose of coordinating and harmonizing the regulation of telecommunications. All of these agreements could be made subject to the new constitutional provision allowing for the quasi-entrenchment of intergovernmental agreements. Signatories to agreements (either bilateral or multilateral) could expressly designate the application of this provision, effectively rendering the agreements inalterable for a five-year term. Clearly, a number of these provisions, in particular those relating to immigration, labour market development, and culture, were designed to respond to Quebec's traditional constitutional demands. However, in none of these interstate provisions are Quebec's demands acknowledged. Instead, all of the proposed changes to federal and provincial roles and responsibilities would be extended to all provinces, and in many cases, the territories as well, further entrenching the vision of equal provinces.

The Charlottetown Accord also contained a number of provisions that were unrelated to Quebec's constitutional demands. Governments would have been committed to the preservation and development of the Canadian social and economic union, concepts explicitly entrenched in the constitution for the first time. The social union would include provision of a health care system consistent with the principles of the *Canada Health Act*; provision of adequate social services; provision of high quality education and ensuring reasonable access to post-secondary education; protecting the rights of workers to organize and bargain collectively; and protecting, preserving, and sustaining the integrity of the environment (Canada 1992b, 45). The economic union included the free movement of persons, goods, services and capital; the goal of full

employment; ensuring a reasonable standard of living for all Canadians; and ensuring sustainable and equitable development (ibid). The economic union was the final result of what had been one of the only elements of nationalizing federalism in the Charlottetown round. In its initial constitutional positions, the federal government had advanced proposals that "were the most sweeping ever made on economic rights in a constitutional negotiation" (Smith 1993, 91). However, the lack of any firm federal position, as described by Russell, eventually saw these positions abandoned. The Accord also included extensive commitments on Aboriginal self-government, including recognition of the inherent right to self-government (1992a, 15-19). These clauses formed an integral part of the Accord, and deserve more than the scant attention they will receive in this space. It is worth noting that much of the provisions of the Accord relating to First Nations remained inexact, and would be subject to continued discussion among governments and First Ministers. Coincidently, First Ministers' Conferences would have been entrenched in the Constitution as an annual event (Canada 1992a, 8).

This, then, was the Charlottetown Accord. It was completed in time to meet the deadline for a referendum in Quebec, and its fate in the ensuing referendum process is well known. On October 26, 1992, the Charlottetown Accord was defeated in a Canada-wide referendum with 54.2% of Canadians voting against it (see Pal and Seidle 1993, 183). It was defeated in every province except New Brunswick, Newfoundland, PEI, and Ontario. Various explanations have been posited for its defeat. Pal and Seidle suggest that the democratization process was only reluctantly accepted by political elites (1993, 144). Russell suggests that it was very difficult to manage the contradictions in the process; while it was very open in the initial, agenda-setting phase and in the final

referendum, it tightly constricted in the middle as traditional constitutional actors undertook their negotiations that resulted in the final accord (Russell 1993, 191-2). As for the referendum campaign, Russell correctly suggests that it is far easier to stir reaction against one element of a multi-faceted political deal than to build support for a series of delicate compromises in a 30 second television commercial (ibid, 224). Beyond these process issues, Pal and Seidle have identified four key themes that account for public mistrust of the accord. The provisions for Aboriginal self-government came under attack from treaty Indians and native women, doing little to help non-Aboriginal support of these clauses (Pal and Seidle 1993, 167). There was fear that the amendments to political institutions, including the continuation of intergovernmental negotiations to deal with issues that the Accord failed to conclusively resolve, "would create political sclerosis" (ibid, 166). Concerns were also raised that the Accord would undermine both the Charter (through the Canada clause, which, it was argued, created a hierarchy of rights), and the powers of the federal government (through the recognition of provincial jurisdiction in a number of areas, and limitations on the federal spending power). In other words, the perceived failure of the Accord to promote (or at the very least protect) the rights-based and centralizing visions of federalism were important elements of its defeat. The dualist vision offended the rights-based vision, while the equality of the provinces vision offended centralizing federalism. Finally, there was the concern that Quebec had got too much (ibid, 166-67). A common sentiment among "no" voters was the perception that too much had been given to Quebec. Russell argues that this in fact accounts for the defeat of the Accord outside of Quebec, while in that province it was defeated for precisely the opposite reason. "The Charlottetown Accord was defeated because, outside

Quebec, it was perceived as giving Quebec too much, while inside Quebec it was perceived as not giving Quebec enough" (Russell 1993, 226). In Quebec, the dualist vision had not been sufficiently entrenched against competing constitutional visions, while outside Quebec, dualism had been given too much recognition at the expense of preferred visions of Canada.

Although the Accord failed, it remains integral to our understanding of Canadian federalism in the 1990s. It represented yet another effort to acknowledge the dualist vision of Canada. There is little doubt, however, that this recognition was compromised. The distinct society clause was but one of eight fundamental characteristics of Canada, and Quebec's demands for additional powers had been generalized to all provinces. In the assessment of Alan Cairns, this suggests "that in the conflict between recognition of formal asymmetry or explicit special status versus equality of the provinces, the latter principle had once again triumphed" (Cairns 1995, 292). This conclusion diminishes the continued importance of the dualist vision of Canada. While dualism had not resulted in increased powers for the Quebec government, it had been given expression through intrastate initiatives that would have enhanced the power of Quebecker's representatives in national institutions. Further, the recognition of the dualist vision embodied in the Accord was intended for constitutional entrenchment. While that entrenchment may have been compromised by the simultaneous entrenchment of competing constitutional visions, it would nonetheless have explicitly placed the dualist vision in the fundamental law of the land. Thus recognition of Quebec as a distinct society, no matter how compromised as a result of contradictory clauses, must be acknowledged as significant.

The Accord is also instructive because it illustrates how political leaders in the 1990s contemplated the recognition of dualism. As noted above, interstate recognition was limited. Instead, the demands of the government of Quebec for additional policy control were met, but only through "provincialization". As Quebec's demands were extended to all other provinces, interstate federalism became a way to recognize provincial equality, rather than dualist conceptions of Canada. The dualist vision was recognized, however, through intrastate initiatives, within the institutions of the central government. A double majority would be required in the Senate for initiatives materially affecting the French language, 25% of Members of Parliament would be from Quebec, and one third of the Supreme Court Justices would be from Quebec. While these measures seem to have been proposed as a response to the dualist vision of Canada, they did not respond to Quebec's traditional demands that more power reside with the provincial government, the only government controlled by a majority of French Canadians. The effort to address the dualist vision of Canada through intrastate, rather than interstate federalism is undoubtedly tied to the process of constitutional negotiation. Not only was Quebec absent for much of the initial stages of the negotiation of the Charlottetown Accord, when it entered negotiations it was forced into a multilateral setting where all provinces, a number of whom were strong defenders of the principle of equality of the provinces, effectively had a veto. The compromise was through intrastate mechanisms that, at the end of the day, failed to resonate positively with Canadians. Finally, the Accord is significant because of the benchmarks it created. Just as Charlottetown was measured against Meech, all subsequent constitutional initiatives –

and non-constitutional initiatives that deal with the same policy areas – will be measured against the Charlottetown Accord.

1995 Sovereignty Referendum

Following the defeat of the Accord, the desire for constitutional change was dead. In fact, the country seemed to move on to other, long neglected, business. This included a raft of elections that saw a number of the key constitutional players change. Premier Getty in Alberta resigned, to be replaced by Ralph Klein who was elected as Premier in 1993. That year also saw the defeat of the federal Conservatives by Jean Chretien's Liberal Party. The Liberals came to power with a strong majority, and would govern for the rest of the decade. This was also the government that would be forced to respond to the sovereignty referendum that became a certainty with the election of the Parti Quebecois as the provincial government of Quebec in September 1994. Like the Liberals in Ottawa, the Parti Quebecois would govern for the rest of the decade. Not surprisingly, their priority in assuming office was to hold a referendum on Quebec's separation. This occurred in November 1995.

In the months leading up to the referendum on sovereignty, the federal government made no efforts to recognize the dualist vision. The workaday government of Jean Chrétien would competently manage the files, and simply make sure that the needs of all Canadians were met. The federal government preferred to focus on the concept of "flexible federalism" (Whitaker 1995, 62). At the centre of the flexible federalism concept was the Canada Health and Social Transfer (CHST), introduced in the 1995 federal budget, which would give provinces and territories increased control of health, post-secondary education, and social policy. Making the CHST the centerpiece of

flexible federalism is nothing more than trying to create a 'silk purse out of a sow's ear,' as the transfer was created with the sole intention of reducing federal funds to the provinces and territories. (The CHST will be considered in more depth in the following chapter.) The federal arsenal did not include much else; the positive economic inducements bandied about in 1981 had been stricken by neo-conservative fiscal policies, and constitutional change could not be considered for Quebec alone (Whitaker 1995, 64, 70). In fact, the federal government repeatedly stated there would be no special deals for Quebec, a marked departure from the efforts to accommodate Quebec nationalism in the 1960s (State of the Federation 1995, 246, 248). While the federal government may not have been particularly well armed heading into the Quebec referendum in the fall of 1995, it did not seem to be particularly worried[5]. The polls showed insufficient support for the sovereignty option to carry a referendum, and federal leaders were confident that Jacques Parizeau could not change this fact in a referendum campaign (Greenspon and Wilson-Smith 1996, 308).

Unfortunately for the federal government, Premier Parizeau did not lead the sovereigntist charge for the duration of the November campaign. A week into the official campaign it was announced that the leader of the Official Opposition, Lucien Bouchard, would serve as "chief negotiator" with the rest of Canada over the terms of separation, instead of Parizeau (Greenspon and Wilson-Smith 1996, 311). Bouchard's presence shifted "the terrain [of the campaign] from reason back to passion", and the polling numbers began to shift (ibid). By the time of a rally planned for October 24 in Verdun, the federalists were seven points behind the sovereigntists. The result was a speech by

[5] For a fascinating discussion of the referendum campaign, including federal over-confidence, see Chapter 20 of Greenspon and Wilson-Smith.

the Primer Minister at the Verdun arena, in which he became considerably more specific about what "flexible federalism" would entail for Quebec. The Prime Minister committed to recognition of Quebec as a distinct society, a constitutional veto for Quebec, and a commitment to vacate the field of labour market training (Greenspon and Wilson-Smith 1996, 323). On October 30, 1995, the sovereignty option was defeated for the second time in fifteen years. This time, however, the margin was much narrower than that in 1980: 50.58% against separation and 49.42% in favour. Nonetheless, a win was a win, and it was now time for the Prime Minister to meet his commitments to recognize a dualist vision of Canada.

This was easier said than done. Three days after the referendum the Prime Minister met with the Premier of Ontario, whose government's support would likely be necessary to meet the 7/50 requirement of the amending formula that would apply to recognition of Quebec as a distinct society, and extension of a veto to Quebec. Premier Mike Harris would not agree, effectively closing the door to constitutional change to entrench the dualist vision (Greenspon and Wilson-Smith 1996, 338). Other options would be required to meet the Verdun commitments. These means were revealed on November 27, 1995, when the Prime Minister announced that his government would recognize Quebec as a distinct society within Canada; not proceed with any constitutional change that affects Quebec without the consent of Quebeckers; and make changes in the field of labour-market training (Canada 1995a, 1).

That day, the federal government tabled in the House of Commons a notice of motion recognizing Quebec as a distinct society. This motion called for the House of Commons:

1. to recognize that Quebec is a distinct society within Canada;
2. to recognize that Quebec's distinct society includes its French-speaking majority, unique culture and civil law tradition;
3. to undertake to be guided by this reality; and
4. to encourage all components of the legislative and executive branches of government to take note of this recognition and to be guided in their conduct accordingly. (Canada 1995b, 1)

The motion recognized that it did not amend the Constitution, but that it constituted a "solemn and important commitment by federal elected representatives, who are the only ones to speak on behalf of all Canadians" (ibid, 2). The impact of this notion is significant, certainly from a symbolic perspective. Unlike the Canada Clause, recognition of the dualist vision had not been watered down by competing conceptions of Canada. The only efforts at recognition were directed at Quebec. On the other hand, the potential power of the Canada clause, constitutional entrenchment that would guide judicial interpretation, was lost. While the motion urged the House to encourage the legislative and executive branches of the federal government to note the recognition of Quebec, this exhortation did not extend to the judiciary, meaning future judicial interpretation of the constitution – a significant method of constitutional change in its own right – would not be affected. This is not to say the motion is meaningless, particularly if the conduct of the legislative and executive branches of government is guided by it. It could provide further justification for the federal tendency towards exceptional treatment of Quebec as a means to recognize the dualist vision. In fact, the evidence to be presented in the following chapters would suggest it might already have had this effect.

At the same time, the Prime Minister announced that a regional veto bill would be tabled in the House of Commons that would require the consent of Quebec, Ontario, and

the Atlantic and Western regions (the formula from the 1971 Victoria Charter) before any constitutional amendment could be proposed in Parliament by the Government of Canada (Canada 1995c, 1). This Bill, C-110, was tabled on November 29, 1995, and was passed by the House of Commons on December 13, 1995. In the interim, the Bill had been amended to include B.C. as a distinct region, following outrage in the province at being included as part of the "west" (Whitaker 1997, 55). Thus, the House of Commons would "lend" its veto to all of these five regions. No Minister of the Crown would propose a motion for a resolution to authorize a constitutional amendment until each of the designated regions had indicated their support (Canada 1995d, 1). While the constitution was not formally changed, it may as well have been. If the federal government refuses to amend the constitution unless Quebec (or Ontario or B.C.) is in agreement, the general amending formula, which currently applies to most constitutional revisions, is meaningless. It may be that the law won't survive beyond the current Liberal government; however, this is doubtful, as it would take a subsequent Act of Parliament to repeal it. The result is likely a lasting change to the constitutional game in Canada, unilaterally enacted by the federal government. This moves beyond symbolic recognition of Quebec's distinctiveness by providing substantive power to the citizens of Quebec (and Ontario and B.C.) that is not available to Canadians living in other parts of the country[6]. There can be little doubt that the legislation is targeted at recognizing the dualist vision of Canada, and its regional focus undermines the vision of equal provinces that is the basis of the existing constitutional amending formula.

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[6] The legislation does not explicitly define the necessary indicator of provincial support, leaving the role of the provincial governments unclear. As a result, it is entirely possible the federal government could go around provincial governments and consult citizens directly through a referendum.

Finally, the Prime Minister announced that the federal Minister of Human Resources Development would table a bill transforming unemployment insurance into employment insurance, and that part of this bill would include the withdrawal of the federal government from labour-market training (Canada 1995e, 2). Far-reaching reforms to unemployment insurance were introduced in Parliament in December 1995, and HRDC Minister Pierre Pettigrew offered a formal offer of devolution of active employment measures to provinces in May 1996 (Stoyko 1997, 94, 99). "In exchange for stable funding over three years, all programs dealing with work experience, employment services (counseling, screening, and job placement), self-employment assistance, and training become the province's domain" (ibid, 99). However, the federal government would continue its role in so-called "Pan-Canadian Activities" including youth employment, the Atlantic Groundfish Strategy (TAGS), aboriginal programs, and the Transitional Jobs Fund. Since then, agreements have been signed with all provinces, except Ontario. Some provinces, such as Alberta and Quebec, have opted to take full advantage of the federal offer, while other provinces, such as Saskatchewan and Nova Scotia have opted for a co-management role (Bakvis 1996, 151). Again, Quebec's demands had effectively been provincialized through intergovernmental initiatives that provided a significant role for all provincial governments. While this final element of the federal government's post-referendum initiatives doesn't support the dualist vision, the other two elements do. In fact, they are in some ways as significant as the proposed changes of the Charlottetown Accord federalism, particularly the change to the constitutional amending formula.

It is clear that recognition of Quebec's distinctiveness was a dominant issue throughout the first half of the 1990s. Governments sought to recognize the dualist vision of Canada in a number of ways. Constitutional recognition was pursued in the Charlottetown Accord. Quebec's distinct society was recognized, along with a number of other characteristics of Canada, in the Accord. To the extent this recognition would have conferred additional powers on the government of Quebec, it was one of the few interstate measures in the Accord to do so. Nearly all of the other interstate measures further enhanced the vision of equal provinces. This was undoubtedly a result of the constitutional negotiating procedures that gave all governments an equal say. Even though the commitment to the dualist vision in the Accord was compromised, Canadians nonetheless rejected it, along with the rest of the Accord. Even so, it remains a key indicator of the importance placed by the federal government on implementing the dualist vision. Initiatives based on a dualist conception of Canada were far more successful outside of the constitutional arena. Key examples are the Canada-Quebec Accord on immigration, and the federal government's initiatives immediately following the 1995 referendum. Outside of the constitutional arena, it was possible for the federal government to respond to the dualist vision of Canada, unconstrained by other provinces or the public focus on constitutional issues. Not surprisingly, the non-constitutional approach has been the preferred strategy of the 1990s, as interstate initiatives that implicitly supported the dualist vision by creating *de facto* asymmetrical arrangements for Quebec became the norm.

Chapter Four: The Changing Context

The evolution of Canadian federalism in the latter half of the 1990s could not have been more different from the first half of the decade. The dualist vision of Canada seemed to disappear from view, as formal efforts to recognize Quebec's distinctiveness and respond to the province's traditional demands ceased. Constitutional change was not an option, and following the federal government's initial response to the 1995 referendum, little action was explicitly taken to address the national unity question. This is not to suggest, however, that the federation has been frozen since 1995. In the latter half of the 1990s, the federal, provincial and territorial governments have pursued a number of common social policy initiatives, in particular the National Child Benefit, Employability Assistance for Persons with Disabilities, "vision statements" for child and disability policy, environmental harmonization, and *A Framework to Improve the Social Union for Canadians*. Quebec, however, has chosen not to participate in this federal-provincial work in areas of provincial jurisdiction. The result of these intergovernmental initiatives is an asymmetrical arrangement for Quebec that implicitly recognizes the dualist vision of Canada. These initiatives developed in a very specific context, defined by the 1995 federal budget. The budget ended the last major cost-shared program, the Canada Assistance Plan (CAP), giving provinces increased policy flexibility in return for reduced federal transfers. Provinces (except Quebec) responded by trying to pursue a leadership role in the redesign of social programs. When the federal government began to participate in the initiatives led by the provinces, it was able to reacquire the visible

role it had lost in provincial social policies when it ended the CAP. Performance measurement has played a key part in ensuring this visibility for the federal government.

Public Finances

The latter half of the 1990s began with a major re-orientation in federal fiscal policy, announced in Finance Minister Paul Martin's February 1995 budget. In much the same way that tax abatements are key to understanding the evolution of federalism in the 1960s, so to is the introduction of the CHST in the 1995 budget key to understanding federalism in the 1990s. Since the election of the Mulroney government in 1984, fiscal restraint had been part of the federal government's agenda. While the Mulroney government succeeded in implementing fiscal restraints that managed to slow the growth of federal expenditures, it never succeeded in getting expenditures to fall below government revenues. The size of annual government deficits and the cumulative federal debt were not priority issues for the Liberal party during the 1993 federal election, although they were acknowledged as issues (Feehan 1995, 31-32). However, political leaders soon came to view the Canadian fiscal situation as one that required serious and immediate attention, and "by the Liberals' second year in power, the debt had become the overriding determinant of their budgetary policy" (ibid., 32). The net national debt had climbed from $329.9 billion in 1989 to $546.1 billion in 1995. The federal government's indebtedness had risen to 73.5% of Canada's Gross Domestic Product, and it was costing approximately $46.9 billion annually to service the interest on the debt (against total federal revenues of $133 billion, and program spending of $114 billion) (Canada 1995f, 69). The result was the 1995 federal budget, in which debt reduction became the focus. In taking this approach, the Liberals effectively ended Human Resources Development

Minister Lloyd Axworthy's Social Security Review process (Rice 1995, 187). Launched early in 1994, the review had achieved little, although it had been intended to build a Canada-wide consensus for a rational overhaul of key social programs. Any choices that the review seemed to offer were removed with the Finance Minister's dramatic action to reduce the federal deficit.

The Axworthy review had largely escaped the Program Review process that determined the cuts for other federal departments. Originally launched as a rationalization of federal programs, Program Review became a means to ensure the federal government would meet its self-imposed target of reducing the federal deficit to 3% of Canada's Gross National Product. While this target had seemed easily attainable at the time of the 1994 budget, it was in jeopardy soon after. Over the summer of 1994, every Minister was provided with his or her budget for the next three years (with some seeing their budgets cut in half), and then prepared a business plan to meet the target. The results became public in the 1995 budget, which in many ways remade Canada. When all the cuts took effect, federal program spending as a proportion of the economy would be reduced to 1950-51 levels (Greenspon and Wilson-Smith 1996, 273). Airports and ports, which had been a solid representation of the federal government in most small and medium sized cities, were to become the responsibility of independent local authorities. Funding for health, post-secondary education, and social programs had been substantially reduced. Funding for the CBC was reduced. The federal government's remaining shares in Petro-Canada were sold. The Crow Rate subsidy was eliminated. In other words, the relationship between the federal government and individual Canadians was fundamentally transformed. In the assessment of retired public servant Arthur

Kroeger, the budget signalled the end of "50 years of activist, interventionist and, above all, self-confident government" (quoted in Greenspon and Wilson-Smith 1996, 274).

From a federal-provincial perspective, the key feature of the 1995 budget is the creation of the Canada Health and Social Transfer (CHST – originally the Canada Social Transfer). The CHST combined the existing social transfers to the provinces, the block-funded Established Programs Financing (EPF) for health and post-secondary education, and the cost-shared Canada Assistance Plan (CAP) for social assistance, into a single block transfer. The transfer would come into effect in 1996-97 (with each province's share based on previous EPF and CAP entitlements), and this share would form the basis of the each province's proportion of the reduced transfer in 1997-98. The federal Finance Minister announced the CHST entitlements would be reduced from approximately $29.4 billion to $26.9 billion in 1996-97 and to $25.1 billion in 1997-98. In spite of this reduction to provincial revenue sources, the federal government argued that the transfer would provide the provinces and territories with the flexibility to innovate, freeing them from the restrictive conditions of the CAP. According to the Finance Minister, "we believe that the restrictions attached by the federal government to transfer payments in areas of clear provincial responsibility should be minimized" (Canada 1995g, 1). As a result of the CHST, "provinces will now be able to design more innovative social programs – programs that respond to the needs of people today rather than to inflexible rules" (ibid.). However, this federal flexibility would have limits. Funding could still be withheld if the five principles of the *Canada Health Act* were violated, or if residency requirements were imposed for the receipt of social assistance. Nonetheless, the detailed accounting and auditing which defined CAP (Perry 1997, 197), and the perceived

influence it provided the federal government over provincial social assistance programs, would be gone, replaced by a block grant that "[in] essence was an extended version of the EPF program" (Perry 1997, 263).

The federal government also suggested that provinces and territories were getting off lightly in the grand scheme of federal restraint measures. The transfers to provinces (including equalization, which was not reduced at all) would only be cut by 4.4%, while overall federal spending was cut by 7.3% (Canada 1995g, 2). While overall "entitlements" to provinces would be cut by 4.4%, it must be understood that these entitlements included "tax points" that had been transferred to the provinces with the creation of the existing EPF program in 1977. Thus EPF, and later the CHST, were composed of both cash and tax points. In subsequent changes, cash became the residual part of the EPF transfer. This meant that the budgetary allocation of EPF and the cash allocation differed, with the cash allocation determined by subtracting the value of the tax points (which generally grow with the economy) from the budgetary allocation of the transfer. These tax points, however, have never been recorded as a line item in the federal budget, because they are not federal revenues. They are collected as part of provincial taxes, and notionally form part of provincial revenues that are allocated to support social programs. Despite what might be called, charitably, the confusing nature of EPF, this system carried over into the Canada Health and Social Transfer. Thus while the total transfer – cash and tax points – might have been reduced only slightly, cash transfers to the provinces would decline by 35%, from $18.5 billion to $12.5 billion (Boothe 1998, 15). The federal Finance Minister did, however, have one thing right; federal spending in this period, excluding the CHST, was cut by just 7% (ibid.).

Provinces Respond

Understandably, provincial governments were less than pleased with the budgetary measures. Of particular concern was the unilateral imposition of the transfer, in spite of previous commitments from the federal Finance Minister for "cooperation and predictability" (Cohn 1996, 175). Also, while the federal budget effectively ended Axworthy's Social Policy Review process, that too had raised the ire of provincial governments. As the order of government with constitutional responsibility for the majority of social programs, provincial governments were not consulted by the federal government during the Axworthy review process. As a result of the two unilateral federal initiatives – social security review and the 1995 budget – provincial Premiers, when they met at their Annual Conference in August of 1995, wanted to "take on a leadership role with respect to national matters that effect areas of provincial jurisdiction" (APC 1995, 1). The rationale for this decision is articulated in the following excerpt from the conference communiqué:

> Premiers agreed the federal government must stop unilateral actions and arbitrary deadlines and involve the provinces and territories before decisions are made in social policy reforms. It is unacceptable for the federal government to, on the one hand reduce federal transfers to provinces and territories, and on the other prescribe the structure and standards of provincial and territorial social programs (ibid., 2).

This statement captures the extent to which relations had eroded between the federal and provincial governments. The trust that existed between leaders in the earlier part of the decade, and was a defining feature of the 1960s cooperative federalism, was gone. As a response to the federal actions, premiers created a Ministerial Council on Social Policy Reform and Renewal to consult on the federal reform initiatives, formulate common positions on national social policy issues, and draft a set of guiding principles for social

policy reform and renewal (ibid., 2-3). While the government of Quebec shared the unhappiness of other provinces, Premier Parizeau did not join in the consensus reached by Premiers, and Quebec was not represented on the Ministerial Council.

The Ministerial Council reported in December 1995, with its report released by Premiers the following March. The report outlined fifteen principles to guide social policy reform and renewal. It also identified an "Agenda for Change and Renewal" that was based on a clarification of federal and provincial roles and responsibilities. Further, the report recommended a number of specific initiatives within various social policy sectors as part of this Agenda. Key among these were recommendations in the Social Services sector to consider: "the possible consolidation of income support for children into a single national program, jointly managed by both orders of government," and "the possible consolidation of income support for individuals with long-term and significant disabilities into a single national program – jointly managed and federally delivered" (Ministerial Council on Social Policy Reform and Renewal 1995, 14). On June 21, 1996, First Ministers met and discussed, among other issues, the contents of the Ministerial Council Report. The Prime Minister agreed that the federal government would work with provincial and territorial governments on a so-called National Child Benefit, and services and supports for persons with disabilities, as well as stating that the federal Ministers of Human Resources Development and Health would work with provinces and territories to advance the Ministerial Council Report (MH Media Monitoring Limited 1996, 6). To fulfill this last commitment, Premiers created the Provincial/Territorial Council on Social Policy Renewal at their 1996 Annual Conference, which would meet with the federal Ministers. Again, Quebec did not agree

to pursue any of these initiatives with the federal government. This meeting set the stage for much of the joint federal-provincial work that would characterize the latter part of the decade, including the work for children, persons with disabilities, the environment, and the Social Union Framework Agreement.

Visibility

By participating in these initiatives advanced by the provinces and territories, the federal government was able to reclaim some of the authority it had ceded with the dissolution of the Canada Assistance Plan into the CHST. This was an important consideration for the federal government, given its longstanding concerns about its visibility to Canadians. This concern is not unfounded, given that under the Constitution, and subsequent interpretation, the provincial governments, rather than the federal government, are responsible for the services most used by Canadians. The provinces run the health care systems, provide welfare, run schools and universities, pave roads, and fund municipalities. The federal government, on the other hand, is responsible for monetary policy, national defence, Aboriginal people on reserves, unemployment insurance, and foreign affairs. While an over-simplification, this brief description does make the point: the policy fields in federal jurisdiction are not those closest to the day-to-day life of most voters. In the past the federal government had gotten around the fact that the priority "people programs" were in areas of provincial jurisdiction by implementing conditional grants and shared-cost programs. This gave the federal government some policy control (and by extension visibility) in areas of provincial jurisdiction in return for a substantial funding role. This consideration was not part of the 1995 budget calculus, however, as the federal government redefined its relationship with Canadians. Not only

were direct federal programs and services cut, but the role that existed in areas of provincial jurisdiction by virtue of the CAP was eliminated with the block funded CHST.

At the same time the federal government was facing the new reality ushered in by the 1995 budget, it was also developing its strategy to respond to Quebec. In the wake of the 1995 referendum, the federal government pursued a two-track approach to national unity. "Plan A" was the positive face of federalism, and is embodied in the quasi-constitutional and intergovernmental initiatives taken by the federal government following the referendum (Whitaker 1997, 53). "Plan B" was the more hard-line approach, with "a promise of a tougher federal stance [for the next referendum] that would insist upon stricter conditions for triggering negotiations for separation, and a rejection of unilateral secession" (ibid.). The most prominent features of the approach have been the federal government's reference to the Supreme Court on unilateral secession by Quebec, and the subsequent passage of the so-called Clarity Act. For present purposes, Plan A is of greatest interest, given the importance of visibility in promoting the benefits of the federal system. While it is important for all Canadians to know what they are getting for the tax dollars they pay to Ottawa, this is even more the case in Quebec. Concrete benefits of belonging to the federation, and having a central government, must be known to every Quebecker, based on the reasoning these benefits will ensure a vote in favour of staying a part of Canada. This reasoning was confirmed with the creation of the Canada Information Office (Whitaker 1997, 63). "The Canada Information Office's mandate is to improve communications between the Government of Canada and Canadians." In doing so, the CIO supports " the [federal] Government's commitment to a strong and united Canada" (Canada 2000d, http://www.cio-

bic.gc.ca/aboutus_e.html). A key part of this "communications" is simply letting Canadians know what the federal government is doing for them. For example, in September 2000 the CIO distributed a 30 page booklet entitled "Government of Canada Services For You," containing information on over 130 services provided by the federal government (Canada 2000c).[1] This is indicative of the importance the federal government places on its visibility to Canadians and the related national unity implications.

The continued salience of visibility to the federal government has been clearly articulated by the Minister of Intergovernmental Affairs, the Honourable Stéphane Dion. It should be noted that Dion very much speaks for the Prime Minister regarding federal-provincial relations. In the aftermath of the Quebec referendum the academic was handpicked to run for the Liberals and appointed to Cabinet as a neophyte Minister in the national unity portfolio (Whitaker 1997, 62). There can be little doubt that his approach to federal-provincial relations is shared with the Prime Minister. In his speech to the International Conference on Federalism, held at Mont-Tremblant, Quebec on October 6, 1999, Dion identified visibility as a principle "common to all federations":

> The public must be aware of the respective contributions of the different governments. That's right, the famous visibility. While it would be very bad if visibility were the main motivation driving governments' actions, citizens have the right to know what their governments are there for. They must be able to assess the performance of each one; it's a question of transparency. And governments will agree more readily to work together if they have the assurance that they will receive the credit for their initiatives (Dion 1999, 3).

This exact same text, save a slightly different formulation of the last sentence, was included in another speech by the Minister eighteen months earlier. It is clearly an important part of the federal government's approach to federal-provincial relations.

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[1] A copy of this publication was received by the author on September 7, 2000.

The federal Minister would suggest that visibility is not the priority for the federal government. However, careful analysis of his comments suggests otherwise. He suggests the purpose of visibility in a federation is to ensure transparency in order that the performance of each government involved in an intergovernmental initiative may be measured; in other words, their electors may hold that governments accountable. The intention is that citizens recognize the federal government's role. If the federal government were really concerned about the ability of citizens to hold their governments accountable, intergovernmental initiatives would be extremely limited (see Richards 1997, 82). By their very nature, intergovernmental programs blur accountability because two or more governments are involved, making it difficult in almost all cases to assess the relative responsibility of either partner. For example, in the debate over health care, Canadians could understandably be confused about who is ultimately responsible for the state of hospital care in this country. Is it the federal government that provides significant transfers to the provinces, or is it the provinces that provide the bulk of the funding and administer the hospital system? As both orders of government play a significant role in the health care system, the answer is far from clear. Despite this lack of transparency, intergovernmental initiatives continue to proliferate because they are an important means for the federal government to exert a role in the highly visible social policy areas that are primarily provincial jurisdiction.

Intergovernmental initiatives seem to have been pursued by the federal government as a means to reassert the role that was lost with the creation of the CHST and the end of the CAP. In fact, these initiatives seem to provide a federal role beyond that which existed under CAP. Introduced in 1966, CAP replaced the categorical

programs that had been targeted at the blind, the disabled, and certain social assistance recipients. As discussed in Chapter Two, these programs were relatively intrusive uses of the federal spending power and had a substantial impact on provincial program design. For example, under the *Disabled Persons Act*, the federal government cost-shared means tested pensions for persons meeting medical tests for permanent and total disability (Perry 1997, 195). The medical and income tests were uniform across Canada, as was the basic pension. Because the federal government would provide half the pension to those who qualified under the program, there was a strong incentive for provinces to participate. The *Established Programs (Interim Arrangements) Financing Act* allowed provinces to opt out of these and other programs with compensation, although only Quebec took advantage of these provisions. In part to increase flexibility for all provinces (and narrow the special status that had been achieved by Quebec through EPF), the federal government introduced CAP, which provided provinces with the freedom to set the benefits and rates of assistance (Simeon 1972, 76; Perry 1997, 197).

CAP has since been mythologized in the press and among social policy activists as an instrument through which the federal government ensured a uniform standard of social assistance programs across Canada (Boychuk 1998, 99). Boychuk disputes this notion. "In reality, CAP guaranteed very little in the way of a right to a minimum level of assistance. The uniformity that had existed among provincial social assistance systems under CAP was also minimal" (ibid.). If this is the case, why did the federal government seem so anxious to try to reclaim some of the ground that was apparently lost with the creation of the CHST. The answer is found in the federal government's concerns about visibility and the media reaction when CAP was abolished. While empirical evidence

may show that the Canada Assistance Plan did little to prevent the development of different provincial social assistance regimes, this was certainly not the perception of the media. To the extent that the media is reflective of broader public perception, this suggests that most Canadians would have understood that CAP provided the federal government with an important role in provincial welfare programs. That this was not the case is not necessarily that important. When visibility is the primary goal, the actual outcome matters far less than the perceived outcome.

In many ways the developments of the late 1990s have reached beyond the CAP to the era of categorical programs that preceded it. Of particular concern at the 1996 First Ministers' Meeting were policy initiatives for children and persons with disabilities. These have been dealt with through separate approaches, evocative of the categorical programs (which used to deal with, among other issues, disabilities support). To the extent that these initiatives involve the transfer of funds, detailed provincial accounting is still required. However, unlike the CAP, specific conditions are seldom applied. Instead, the federal and provincial governments agree on common policy and program objectives of varying specificity. In addition to giving the federal government visibility in areas important to Canadians, this approach ensures that provinces will pursue common policy objectives, often through similar approaches, in areas of provincial jurisdiction. This does not necessarily mean that provinces will respond to issues in the exact same way, as different policy alternatives may meet the agreed-upon goals. Nonetheless, the federal government, by virtue of helping to define the common policy objectives, has a significant role in provincial policy development, which is arguably stronger than it had under the CAP. This approach has generally been duplicated in the development of the

accord on environmental harmonization, suggesting that there is a government-wide approach to these issues.

Performance Measurement

The conditions of CAP have also been replaced to a degree by the intergovernmental commitment to performance measurement, which is a key component of the public management theories that have come to be known as the "new public management". The new public management at its heart calls for a cultural shift away from bureaucratic government towards a more entrepreneurial government (Savoie 1995, 113), and gained currency in the late-1970s as a response to economic pressures, perceived failings of both bureaucracies and Keynesian economic policies, and a lack of public confidence in government (Aucoin 1995, 2). It is characterized by an emphasis on policy control for elected leaders, increased autonomy for government managers to effectively manage policy implementation, and an overriding concern with customer satisfaction. In addition, Donald Savoie writes that the "philosophy [of new public management] is rooted in the conviction that private sector management is superior to public administration" (1995, 113). A seminal work in the application of business management practices to government is *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Private Sector*, by David Osborne and Ted Gaebler. They combine key business management principles – results orientation, customer-focus, decentralized authority, prevention of problems, and a market approach – with five additional principles to facilitate application to government (Osborne and Gaebler 1992, 20-21). These are "steering rather than rowing", empowering citizens, competition, mission-driven government, and enterprising government (earning rather

than spending). A fundamental part of the new public management is performance measurement, which is a means to ensure government accountability for its use of public funds.

While the new public management was initially associated with the neo-conservative governments of Margaret Thatcher and Ronald Reagan, and to a lesser extent Brian Mulroney, it has become an important part of the Liberal Party's governing philosophy. In June 1997, the Treasury Board was designated as the federal "government's management board" (Canada 2000e, http://www.tbs-sct.gc.ca/res_can/rc_bro_e.html). In this capacity, the Treasury Board Secretariat has produced "Results for Canadians - A Management Framework for the Government of Canada", which articulates a coherent framework for management within the central government. To provide the highest possible public service to Canadians, the federal government is committed to excellence in four critical areas: focusing on citizens, embracing a clear set of public service values, managing for results, and ensuring responsible spending. Of these, two – focusing on citizens and managing for results – clearly resonate with the tenets of new public management and illustrate the importance of this approach to the federal government.

Two elements of the new public management - steering rather than rowing and performance measurement - warrant additional consideration for present purposes. "Steering rather than rowing" means that governments should not necessarily be directly involved in the provision of public services. Consistent with a market approach, alternative service delivery mechanisms – be it the private, voluntary, or even other public sector institutions – may be engaged to provide a given service more efficiently

and in a manner that better meets the needs of the "client". This does not mean, however, that there is no role for government. Rather, government has the key role of defining what is delivered. At its broadest, this is the definition of program objectives, although it may also be more detailed, ranging from general program operating principles to detailed implementation plans for service delivery partners. A key concern for the federal government is to ensure the accountability of alternative service delivery mechanisms for the use of public funds. One part of this is simply to ensure the funds are spent properly, through standard accounting procedures. However, an additional element of this accountability is whether the programs provided by alternative mechanisms are actually working. For this, performance measurement plays a central role, as it enables the federal government to determine whether the intended results are being met by the alternative service delivery mechanism.

The difficulty comes when this is transposed onto a federal system. In the Canadian context, it is clear that the federal government increasingly sees the provinces as potential alternative service delivery mechanisms. Certainly, the 1999 report of the federal Auditor General appears to understand provinces in this way, as an appendix cataloguing the federal government's new governance arrangements includes a large number of federal-provincial programs (Canada 1999d, 23-37 to 23-39). Of particular interest to the Auditor General were the National Child Benefit and Employability Assistance for Persons with Disabilities, which were examined with input from Human Resources Development Canada officials. For both of these programs the Auditor General made recommendations to ensure appropriate accountability on the part of the provinces and territories for the funds they receive from the federal government. "A key

mechanism for demonstrating accountability is credible reporting" of both outputs and performance outcomes (Canada 1999d, 6-16). Provincial accountability, supported by performance measures, is recommended in the same way it would be if the provinces were private sector contractors. As Alain Noel correctly points out, this logic "associates democratically accountable provincial governments to private or voluntary sector service providers that are in a principal-agent relationship with the federal government" (Noel 2000, 7). The NCB and EAPD are, after all, social programs in areas of provincial jurisdiction. Provincial governments that participate in these initiatives are already accountable to their electorate. The suggestion that provinces be accountable to the federal government for the results achieved under these programs essentially replicates the effect of the federal spending power. The federal government requires provincial accountability to ensure provincial decision-making conforms with federal requirements. To return to Petter, national majorities are able to set priorities and determine policy within the constitutional jurisdiction of regional majorities (Petter 1989, 465). While it is questionable to what extent the Auditor General, as an independent officer of Parliament, speaks for the Government of Canada, he certainly represents an important reference point for the federal government as it implements its commitment to performance measurement. Indeed, Human Resources Development Canada noted that the "comments and suggestions of the Auditor General will be of considerable assistance" in developing the accountability regimes for the child benefit and disability assistance programs.

Certainly a common feature of the intergovernmental initiatives pursued since 1995, including the NCB and EAPD, has been a commitment to outcome measurement as a part of accountability frameworks. This presents the federal government with another

way to replace the role it lost in provincial social programs with the introduction of the CHST, although it is difficult to generalize about the exact nature of the federal role given the variance in proposed accountability regimes. As will be seen in the next chapter, both the NCB and NCA focus on broad, societal outcome types of measures, whereas EAPD focuses to a greater degree on assessing provincial performance in program delivery. It is safe to say, however, that the development of performance measures will have some effect on how provinces allocate their resources. There will be a tendency on the part of provincial governments to ensure that the programs that are the subject of intergovernmental measurement are adequately funded so provinces "measure up". This may pull provincial funding from related priority areas or entirely different parts of the provincial budget. While individual jurisdictions do this themselves, to an extent, when they adopt a performance measurement regime, the difference is that they maintain control of the performance measures. Cynically, this can be interpreted as an effort by governments to develop measures that will make them look good. However, it also means that jurisdictions measure the things they believe most important. If performance measures become the subject of intergovernmental agreement, it becomes possible that the measures may vary subtly from provincial priorities. To the extent this is the case, funds may be redirected from the priorities identified by the provincial majority to those that are important to the national majority. As what is measured helps to define what is important, the federal government is able to exert additional leverage on provincial policy directions by playing a central role in developing performance measures.

In some ways, the development of performance measures may give the federal government a greater role in provincial policy development than was enjoyed under CAP. The information provided by performance measurement could be used either formally or informally to influence provincial spending decisions. Formally, this would entail tying funding to performance. While consistent with the ethos of performance measurement, it seems unlikely that any province would ever agree to such an arrangement. What is more likely is that the information provided by performance measurement – even those measures that consider broad societal indicators – would be used by the federal government in the court of public opinion to influence provincial behaviour. It is not unreasonable to suspect the federal government could succumb to the temptation to "score" political points and exert influence over provincial policy decisions by attempting to shift public opinion. Certainly, evidence to support this hypothesis is seen in the federal government's response to Alberta's Bill 11. In that instance, the federal Minister of Health repeatedly noted the federal government's concerns with Alberta's proposed legislation, implying that Bill was in contravention of the *Canada Health Act* (Choudhry 2000, 9). In the end, however, the federal government concluded, as it must have known all along given its refusal to state otherwise, that the Bill did not contravene the Act (ibid.). This capricious and highly political example may become more common as performance measurement is introduced to intergovernmental initiatives, providing the federal government with the necessary ammunition for such interventions. While performance measurement may enhance the accountability of governments to their citizens, it also has the ability in the federal context to create inappropriate accountabilities between the federal and provincial governments.

As the federal government has navigated the post-CAP waters, it has reasserted a vision of centralizing federalism. Through agreement on common policy approaches and a shared approach to performance measurement, the federal government has created a significant role for itself in areas of provincial jurisdiction, just as it did through the shared-cost programs of the 1960s that predated the CAP. The context, however, is quite different. Unlike the building of the welfare state in the 1960s, the latter part of the 1990s was not a period of government growth. In fact, it was a period of retrenchment. Most provinces introduced their own version of the federal government's 1995 budget. Thus the Chrétien government, unlike that of its Liberal predecessor Pearson, could not rely on the provinces to build or maintain the social programs it considered valuable. A strong federal role in areas of provincial jurisdiction was required to ensure the outcomes desired by the federal government were met. This situation did nothing to enhance the trust between governments, a further distinction from the mid-1960s.

The federal watershed for reducing the size of government in the 1990s was the 1995 budget, which transformed the federal government's relationship with Canadians, and the funding arrangements with provinces for social programs. Provinces and territories were incensed at the unilateral federal action and sought to assert leadership in the social policy field. At the First Ministers' Conference in 1996, the federal government agreed to participate in the initiatives championed by the provinces. As a result of federal participation, however, the initiatives have been shaped as much by the federal government's efforts to address the limited role it created for itself through the CHST as by provincial leadership. The result has been the development of initiatives that formalize a policy role for the federal government in areas of provincial jurisdiction, thus

promoting a centralizing view of federalism. This role is twofold, reflected in both the commitment to joint policy development, and the need for accountability supported by performance measurement. This has begun to replicate the categorical programs of the 1960s, in which specific initiatives were targeted at certain client groups. Quebec, however, has chosen not to participate in these initiatives, unlike the other provincial (and territorial) governments. The specific initiatives that developed within this context will be considered in the next chapter.

Chapter Five: Dualism Since 1995

The Social Policy Renewal process advocated by Premiers was a direct result of the 1995 federal budget. As the federal government bought into this process, it became a means to reassert its role in areas of provincial jurisdiction that had been lost when CAP was folded into the CHST. Since 1996, the federal and provincial governments have agreed upon common policy directions and to measure the outcomes of their efforts through accountability frameworks. Specific initiatives include Employability Assistance for Persons with Disabilities (EAPD), the National Child Benefit (NCB), the National Children's Agenda (NCA), *In Unison*, and environmental harmonization, all flowing out of the direction from the 1996 First Ministers' meeting, and *A Framework to Improve the Social Union for Canadians*. The development of these intergovernmental initiatives strengthened the federal government's role in areas of provincial jurisdiction, in a manner reminiscent of the categorical programs that preceded the Canada Assistance Plan. Just as Quebec opted out of the categorical programs in the 1960s, the Government of Quebec chose not to participate in the initiatives developed in the 1990s. Thus while other provinces have agreed to a strong leadership role for the federal government in a number of provincial policy fields, Quebec is on the outside. In the case of the NCB and EAPD this means Quebec receives all of the benefits of these intergovernmental initiatives without formerly participating in them. In addition, by not agreeing to a strong federal role, Quebec has created the potential to pursue independent policy approaches, even where no significant difference may currently exist. This is particularly the case with the Social Union Framework Agreement, which determines the rules of the game for

intergovernmental cooperation in social policy sectors. Given its overarching nature, it will likely set the benchmark for non-social policy sectors as well. Both this potential, and the concrete asymmetry of the NCB and EAPD, effectively support a dualist vision of Canadian federalism.

Employability Assistance for Persons with Disabilities

In March 1998, federal and provincial Social Services Ministers, except Quebec, agreed to the multilateral framework of the Employability Assistance for Persons with Disabilities Program (EAPD).[1] The federal government proposed EAPD as a replacement for the 35-year-old cost-shared program, Vocational Rehabilitation for Persons with Disabilities, with a stronger focus on employment and labour market interventions for persons with disabilities than its predecessor. Although the financial arrangements of EAPD would be governed by bilateral agreements between the federal and provincial governments, Social Services Ministers (except Quebec) first signed a multilateral framework to guide the negotiation of the bilateral agreements. Under the multilateral framework, governments agreed to the principles, implementation timeframes, range of eligible programs and services, and the funding arrangements ($168 million annually) on which the bilateral agreements would be based (Federal/Provincial/Territorial Ministers Responsible for Social Services 1998b, 2-7).

A key part of the framework (fully one third) detailed the accountability framework, which would consist of outcome measurement, joint planning, and evaluation. Governments agreed to pursue both qualitative and quantitative approaches to accountability. Under the multilateral framework, qualitative measures could focus on

[1] For the purposes of this Chapter, all reference to provinces in intergovernmental agreements includes the territories, unless stated otherwise.

consumer satisfaction; the reduction of individual and systemic barriers and how to achieve a more inclusive labour market; and demonstration or pilot projects testing new approaches (ibid., 8). In terms of quantitative measures, governments agreed that the short and medium-term success of interventions would be measured by the following:

- the number of people employed, or sustained in employment in the case of vocational crises;
- the number of people actively participating in or successfully completing their program and if unsuccessful in their completion, why;
- the number of people not served, on waiting lists or unable to access interventions;
- the savings to income support programs as a result of increased earnings through employment; and,
- the number of people who have received supports and have maintained employment or advanced in their jobs (ibid., 9).

The EAPD accountability regime is directly concerned with assessing the performance of provincial programs. In fact, it would seem that that is the only point of the measure considering the number of people not served or on waiting lists. The data generated from the measures would form the basis of provincial annual reports and multi-year program plans. Under the framework, "Each province and territory will prepare a multi-year program and expenditure plan for review with HRDC, and an annual report on results achieved. The annual report will be the basis for making any required adjustments to the multi-year plan and will be made public." (ibid., 10) In this instance, the federal government has essentially developed a co-management role with the provinces and territories in the implementation of EAPD. Through the accountability framework, the federal government has ensured that provinces will jointly plan their initiatives with Ottawa, and effectively report to the federal government on the outcomes they've achieved. As well, the possibility exists that funding will be tied to performance, as multi-year plans could be adjusted based on the annual report. It seems likely that this

adjustment would either reward provincial "successes" or correct provincial actions that weren't seen to be achieving the desired results.

Again, Quebec did not participate in the multilateral framework. Although it signed a bilateral agreement like the other provinces, that agreement did not have to be guided by the multilateral Framework. As a result, there are some significant differences. Four results measures are identified in the Canada-Quebec bilateral; a comparison of these measures and those in the multilateral framework follows.

Canada-Quebec Bilateral Agreement	Comparison to Multilateral Framework
The number of persons participating in the programs and services.	These two measures duplicate a measure in the multilateral framework. However, they don't address an additional part of the multilateral measure which would address why individuals were unsuccessful in completing programs.
The number of persons who have successfully completed the programs and services covered by the agreement.	
The number of persons employed or self-employed as a result of participating in the programs and services.	This is similar to the multilateral measure for the number of people who have received support and maintained employment or advanced in their jobs.
The number of persons sustained in employment in cases of vocational crisis, as a result of participating in the programs and services.	This measure is consistent with the multilateral framework.

(Canada-Quebec Agreement EAPD,3).

Missing from the bilateral agreement are the measures for the number of people not served or who are on waiting lists, and the savings to income support programs as a result of increased earnings. Quebec's bilateral agreement clearly states that the province will compile this data and report annually, although it is not specified that this report will be to the federal government, as is the case in the multilateral framework. Evaluations of the relevance and effectiveness of the programs and services provided by Quebec are also clearly identified as the province's responsibility (ibid., 3-4). While the bilateral agreement does specify a multi-year plan for Quebec, the plan simply includes the

principles and approaches of the "Quebec model" (ibid., 13). Further, there is no commitment by the province for annual review and adjustment of the plan in co-operation with federal officials. The agreement states that "Beginning in 2000-2001, the Multi-year Plan *may* be reviewed in keeping with the commitments made in [the Accountability] section of this Agreement" (emphasis added; ibid., 5). Quebec clearly has secured a deal unavailable to the other provinces. While the province will receive its share of the federal funding, the money will come without a strong role for the federal government. By giving itself this space, Quebec was further able to consolidate its distinct ability to pursue policies and programs for persons with disabilities.

National Child Benefit

Quebec further consolidated its ability to pursue a unique approach to social policy by placing itself outside the National Child Benefit, which came into effect on July 1, 1998. Federal and provincial Ministers responsible for Social Services agreed to the implementation of the NCB based on the direction from First Ministers in 1996. The stated objectives of this program are to help prevent and reduce the depth of child poverty; promote attachment to the workforce; and reduce overlap and duplication between federal and provincial programs (Canada 1998b, 1). Under this program the federal government would increase the Canada Child Tax Benefit (CCTB) to low-income families with children; provinces and territories would simultaneously reduce the benefits of social assistance recipients with children by an equal amount (so that there would be no difference at the end of the day); and provinces and territories would reinvest these funds in programs to support low-income families with children (Canada 1998a, 1-2). When the Benefit was announced, governments agreed that there would be an annual

report on the program, which would include outcome measurement (ibid., 2-3). The only government not to agree with this national initiative was Quebec, which noted by way of a footnote to the documents explaining the Benefit that although the Government of Quebec agreed with the basic objectives of the NCB, it was not taking part in the program because "it wishes to assume control of income support for the children of Quebec" (Canada 1998a, 1; 1998b, 1). This is not to say that Quebeckers will be denied the benefits of the increased CCTB; federal increases in the value of the tax credit are available to all Canadian citizens. Thus Quebec has achieved a privileged place for itself. It does not have to reduce social assistance as other provinces have agreed, thereby allowing the federal funds to flow through and provide additional support to families on welfare. In addition, the province is not tied to the so-called "re-investment strategies", giving Quebec additional policy flexibility.

Quebec also placed itself outside the annual report performance measurement regime of the NCB. The first report, issued in 1999, was largely descriptive, explaining how the NCB worked, and the details of the provincial reinvestments. It included a chapter on monitoring progress, which noted that "one of the key purposes of future National Child Benefit reports will be to monitor program activities and the results they generate, and to present research and evaluation results that will indicate whether the initiative's goals are being met" (F/P/T Social Services Ministers 1999, 25). In 1999 governments remained at a planning stage in developing performance indicators, but the report included the following as a "starting point for assessing the key social and economic trends related to the goals of the NCB" (Ibid.).

NCB Goals	Progress Indicators
1. Help prevent and reduce the depth of child poverty	Reduction in the depth of low income due to National Child Benefit-related transfers. Additional indicators: ▪ Number of low-income children and families. ▪ Incidence of low income among families with children. ▪ Depth of low income among families with children (percentage that family income is below low-income thresholds).
2. Promote labour market attachment	▪ Percentage of low-income parents who are employed during the year. ▪ Average weeks worked by parents of low-income families. ▪ Percentage of weeks worked full time by employed low-income families. ▪ Average earnings of employed low-income families as a percentage of the low-income thresholds. ▪ Percentage of low-income families on social assistance during the year. ▪ Social assistance benefits for families with children as a percentage of total family income.
3. Increase harmonization and reduce overlap and duplication of federal, provincial and territorial programs	Indicators have yet to be developed. They likely will be both qualitative and quantitative and reflect key delivery issues such as payment systems, information sharing, reinvestment program design and delivery.

(F/P/T Social Services Ministers 1999, 26)

The report acknowledges that given the broad nature of the data, it will be very difficult to ascribe any improvements in the condition of low-income families to the National Child Benefit alone. As such, the impact of the measures on provincial programming decisions is unclear. It is worth noting, however, that the indictors for the third NCB goal will consider program design and delivery of provincial reinvestments. Given the experience of Employability Assistance for Persons with Disabilities, this may have

important ramifications. Regardless, the federal government has created an important role for itself. Not only is it a key partner in determining the program priorities of the NCB, but in helping to define the data that is collected – in other words what is worth measuring – it implicitly exerts some influence on provincial reinvestments. The measures will create an incentive for provinces to reinvest in programs that best meet them, regardless of the sensitivity of the measures to provincial particularities. Quebec, however, is an outlier, having given itself the ability to pursue a unique child and family policy, independent of the federal and provincial governments, if it so chooses.

National Children's Agenda

During the development of the National Child Benefit, Social Services Ministers agreed that it would be useful to have a shared vision of how children should be supported in Canada (Provincial/Territorial Council on Social Policy Renewal 1999a, 4). At their 1997 conference, Premiers strongly supported the development of the National Children's Agenda (NCA). At their meeting in December of that year, First Ministers (except Premier Bouchard) identified it as a priority for coordination by the Federal/Provincial/Territorial Council on Social Policy Renewal (APC 1997, 3; FMM 1997, 2). In May 1999, the F/P/T Council on Social Policy Renewal released two discussion documents: "Developing a Shared Vision" and "Measuring Child Well-Being and Monitoring Progress". These discussion documents would form the basis of a public consultation, resulting in a "vision that can help all parts of our society to focus on children's needs" (Federal/Provincial/Territorial Council on Social Policy Renewal 1999a, i). This vision is very general, and begins by stating that "Canadians want their country to be one where all children thrive in an atmosphere of love, care and

understanding, valued as individuals in childhood and given opportunities to reach their full potential as adults." The goals of the Agenda are that children will be healthy physically and emotionally, safe and secure, successful at learning, and socially engaged and responsible. Building on this, the following broad areas for future action are defined:

1. Supporting parents and strengthening families;
2. Enhancing early childhood development;
3. Improving economic security for families;
4. Providing early and continuous learning experiences;
5. Fostering strong adolescent development; and,
6. Creating supportive, safe and violence-free communities.

The supplementary discussion paper on measuring and monitoring discussed how efforts to improve the well being of children could be measured, and what outcomes would be useful. A broad range of possible indicators or key environments and child outcomes are included for all developmental stages and transitions. These are included as Appendix I. While the documents are currently quite vague, the potential exists for the federal government to play a leadership role in policy areas that are largely provincial jurisdiction, both by working with provinces to develop policy initiatives under the agenda, and the commitment to measuring key outcomes. The exception again will be Quebec, as the footnote was included at the outset of both documents, with the Government of Quebec agreeing with the objectives of the initiative, but refusing to participate because it wished to "assume full control over programs aimed at families and children within its territory" (ibid.). Certainly, Quebec's understanding is that the NCA will eventually lead to further federal-provincial initiatives. By not agreeing to participate, Quebec has effectively given itself further space to pursue its own child and family policies – and further consolidate its distinct society – while the rest of Canada pursues a common vision of child and family policy.

In Unison

This scenario was repeated in October 1998 when Social Services Ministers agreed on *In Unison*, a vision for programs and services for persons with disabilities. This document was developed in response to the 1996 direction from First Ministers to make disability issues a collective priority (Federal/Provincial/Territorial Ministers Responsible for Social Services 1998a, 7). *In Unison* articulated a vision in which "persons with disabilities participate as full citizens in all aspects of Canadian society," based on a number of shared values and principles (ibid., 13). In turn, the vision informed three so-called "building blocks" – disability supports, employment and income – which together are vital to making the vision a reality (ibid., 19). For each of the building blocks, objectives and policy directions were articulated, and it was agreed that an accountability framework would be required to enable Canadians to "assess the effectiveness of disability-related policies and programs" (ibid., 7, 10). It is not clear what form these measures might take, particularly given the differences that exist between the comparable work on a vision for children's policy and the specific measures being developed as part of EAPD. Again, the Quebec footnote was included, substituting the words "programs for persons with disabilities" for "income support for the children" (ibid., 5). As the other provinces agreed with the federal government to develop a common policy direction in *In Unison*, supported by performance measurement, Quebec again has made no such political commitment. This does not mean that Quebec's programs are terribly different at this time. Indeed, Quebec shares the same general objectives as the other provinces and territories. What has happened yet again, however,

is that Quebec has created the space for itself to pursue a different path than the rest of Canada, with minimal federal involvement, if and when it chooses.

Environmental Harmonization Accord

A final initiative, and one less obviously linked with social policy, was the signing of the Environmental Harmonization Accord in January of 1998, again based on direction from the 1996 First Ministers' meeting (Durkan 1996, 7). While unrelated to the federal cuts to the CHST, the Accord again provides evidence of *de facto* distinct society for Quebec, whose Minister refused to sign the Accord because certain conditions, including federal legislative amendments to recognize the need to reduce federal-provincial overlap and duplication, had not been met (CCME 1998a, 1). Canadian environment ministers had agreed in 1993 that their top priority for the coming years should be the harmonization of environmental programs and policies (CCME 1998b, 1). The Accord was intended to "develop and implement consistent environmental measures in all jurisdictions, including policies, standards, objectives, legislation and regulations," while also clarifying the roles and responsibilities of the federal and provincial governments so that specific roles and responsibilities would generally only be undertaken by one order of government (CCME 1998c, 1). The Accord articulates a number of guiding principles, and describes the process for the development of sub-agreements that would be related to the specific components of environmental management to be "addressed on a Canada-wide partnership basis" (ibid., 2). Under the Accord, governments are free to introduce more stringent environmental measures if circumstances warrant, and remain free to act in their existing authorities if consensus is not achieved in a given area (CCME 1998b, 2). Thus far, sub-agreements

have been signed on environmental standards and environmental assessments, while sub-agreements on Monitoring and Reporting, and Inspections and Enforcements are currently under development. Under the Standards sub-agreement, Ministers have ratified standards for particulate matter, ozone, mercury emissions, and benzene, with several others accepted in principle. As a result of the Accord and work continuing under its auspices, it is clear that the governments outside Quebec are slowly moving towards a common approach to environmental policy. Again, the trend is clear. This time in an area of contested jurisdiction, Quebec has chosen not to participate in a federal-provincial initiative. As with the children's and disability files, Quebec's decision creates the possibility that a substantially different environmental policy may evolve in Quebec.

The preceding analysis has suggested that Quebec may be inclined to pursue distinct social policies. This certainly seems to be a reasonable expectation, given the existing social policies in the province. For example, in the area of child and family policy, Jenson, in a comparative study of B.C., Alberta, Saskatchewan, Ontario, Quebec, and New Brunswick, has illustrated the uniqueness of Quebec's policy approach (1999). The most dramatic difference is in the area of child care, where Quebec has implemented a program of $5 per day daycare, "available to all citizens, rather than just the poor citizens" (ibid., 9). In addition, other significant differences exist. Quebec provides up to one year of unpaid parental leave, in comparison with 12-18 weeks in the other jurisdictions (ibid., 14). Quebec provides a universal tax credit for families with children, whereas the other jurisdictions generally target such credits to low income families (ibid., 22-23). Quebec's family allowance is more generous (considerably in some cases) than those offered in B.C., Saskatchewan, and New Brunswick, which have similar programs.

Similarly, Quebec's working income supplement for low-income families is also more generous than that offered by the other provinces. This Quebec model for family policy seems to have a counterpart in the area of disability policy. The Canada-Quebec EAPD bilateral agreement defines the Quebec model, based on the principles of universal access, a comprehensive approach to the individual's needs and a continuum of services, and integrated services. Indeed, the agreement explicitly states that the "Government of Canada recognises the characteristics of the Québec model of programs and services for persons with disabilities" (Canada-Quebec Agreement, 10). This reference clearly indicates that Quebec is seen to have a unique approach to disabilities policy, comparable to the province's unique family policy. Based on these examples, Quebec's decision not to participate in common intergovernmental initiatives in these and other policy areas so it may maintain the ability to pursue a distinct approach, should come as no surprise.

Social Union Framework Agreement

While this broad array of initiatives was being developed in specific policy areas, the Provincial/Territorial Council on Social Policy Renewal continued to work on the initiatives identified by Premiers at their 1996 conference. This included direction to "design options for mechanisms and processes to develop and promote adherence to national principles and standards" (Working Group 1996, 13). These options were fleshed out by the P/T Council on Social Policy Renewal in a paper entitled "New Approaches to Canada's Social Union". Premiers considered the paper at their 1997 conference, and directed the Council to "negotiate with the federal government a broad framework agreement on the social union to address cross-sectoral issues such as common principles, the use of the federal spending power and new ways to manage and

resolve disagreements" (APC 1997, 2). The concept introduced during the Charlottetown round had returned to the intergovernmental table. At the First Ministers' meeting in December of that year, Ministers, under the auspices of the F/P/T Council on Social Policy Renewal were directed to negotiate an agreement that would address:

1. A set of principles for social policy, such as mobility and monitoring social policy outcomes;
2. Collaborative approaches to the use of the federal spending power;
3. Appropriate dispute settlement mechanisms between governments;
4. Clarification of ground rules for intergovernmental cooperation; and
5. Identification of processes for clarifying roles and responsibilities within various social policy sectors. (FMM 1997, 1).

While First Ministers called for completion of this work by June 1998, an agreement was not signed until February 4, 1999. Ministerial negotiations did not begin until March 1998, and then continued intermittently, effectively coming to a stop in the lead-up to the Annual Premiers' Conference that summer. During the APC in Saskatoon, Quebec, which had to that point remained outside of the negotiations, joined the provincial/territorial consensus position on the federal spending power, and entered the negotiations. The profile of the negotiations increased, only to be suspended during the Quebec election that fall (Tremblay 2000, 164). Late in January, provinces advanced a provincial consensus on all of the issues under discussion to the federal Minister during negotiations in Victoria.[2]

In response to the strong provincial position, the Prime Minister called Premiers together at 24 Sussex Drive, where the Framework Agreement was signed on February 4, 1999. The document presented by the Prime Minister and signed by Premiers differed

[2] The Provincial/Territorial consensus has been published by the IRPP in *The Canadian Social Union Without Quebec: 8 critical analyses*, eds. Gagnon and Segal. Without undertaking a clause-by-clause comparison in this paper, a review of the final text of SUFA illustrates that Premiers signed an agreement that was significantly weaker than their consensus position.

substantially from both their previously identified objectives, and the consensus position that had been reached by their Ministers only a week earlier. It was only because Premiers were willing to sign an agreement without meeting their stated objectives, that an agreement was possible (Noel 2000, 5-6). They moved away from their consensus on the federal spending power, which, for a number of jurisdictions, had been the primary motivation for entering negotiations.[3] Noel suggests that provinces signed in exchange for enhanced federal funding under the CHST; this is certainly plausible as additional cash appeared in the federal budget two weeks later. While provinces did not meet their objectives, this certainly wasn't the case for the federal government. In an article published during the negotiations, the federal Minister of Justice, responsible for the framework agreement, outlined the key objectives of the federal government. "The Government of Canada believes a new partnership should have three objectives: promoting equality of opportunity for Canadians, wherever they live or move within Canada; improving collaboration among governments to serve Canadians better; and enhancing accountability to Canadians for the results achieved" (McLellan 1998, 6). These objectives were met in the agreement, but it did not include the Government of Quebec. Premier Bouchard refused to sign on to an agreement that codified "the new rules that would govern intergovernmental relations, in all areas of social policy but also, by extension, in a number of sectors not considered in the document" (Noel 2000, 1). These new rules encapsulated the same trends that had arisen in the context of specific sectoral initiatives, specifically a commitment to joint planning and performance

[3] A comparison of the spending power provisions of the final text and the provincial consensus will be undertaken as part of the discussion on the contents of the Framework Agreement.

measurement. Only this time, they were to be applied to the intergovernmental social policy sphere, writ large.

A Framework to Improve the Social Union for Canadians is an administrative agreement that was signed by First Ministers for a three-year term.[4] The first section of the agreement is a series of principles which governments commit to "within their respective constitutional jurisdictions and powers" (Canada 1999a, 1). These principles relate to the equality of Canadians, meeting the needs of Canadians, and sustaining social programs and services. The principles conclude with a statement that nothing in the agreement abrogates or derogates from any Aboriginal, treaty or other rights of Aboriginal peoples including self-government (2). Following the Principles, governments make three commitments regarding the mobility of citizens within Canada. No new barriers to mobility will be created in new social policy initiatives; existing residency-based policies or practices that constrain access to post-secondary education, training, health and social services and social assistance will be eliminated in three years unless they can be demonstrated to be reasonable; and governments will ensure full compliance with the mobility provisions of the Agreement on Internal Trade by July 1, 2001.[5] The "*mobility* of Canadians, the freedom to move anywhere in Canada without barriers based on residency or fear of loss of access to social benefits" was a key priority for the federal government during the negotiations (McLellan 1998, 6).

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[4] The Agreement is included as Appendix II.

[5] The inclusion of the mobility provisions of the Agreement on Internal Trade (AIT), which relate to interprovincial recognition of trade and professional certifications, in the framework agreement creates an interesting situation because although Quebec refused to sign the social union framework, it is a signatory to the AIT. While all other signatories to the AIT have, though the framework agreement, agreed to the July 1, 2001 deadline for the implementation of the AIT's mobility provisions, Quebec has not. The practical implications of this dichotomy are unknown, although it may result in Quebec taking an isolated position on the AIT, as well as the social union framework.

Following the mobility commitments is a section in which each government agrees to a number of elements to enhance transparency and accountability to its constituents. Governments agree to measure and report on the outcomes of social programs, as well as sharing information and best practices with other governments, and working together to develop "comparable indicators to measure progress on agreed objectives" (3). This also was a key priority for the federal government in pursuing the framework agreement (McLellan 1998, 8). These are followed by a series of commitments that promote "Working in partnership for Canadians". Most significantly, governments agree "to work together to identify priorities for collaborative action" and then "collaborate on implementation of joint priorities when this would result in more effective and efficient service to Canadians" (4). Again, this focus on federal-provincial collaboration was a key federal concern (McLellan 1998, 7). This section of the agreement concludes with an "Equitable Treatment" clause, where arrangements with one province/territory for any new Canada-wide initiatives are made available to all provinces and territories (5). This section of the agreement, as well as the subsequent section on the federal spending power, most significantly embodies the federal government's desire to regain the ground it lost when CAP ended. As with the specific initiatives that have previously been identified, it legitimizes federal involvement in provincial social policies through common policy development and performance measurement. Only instead of applying this principle to the social assistance programs covered under CAP, it is applied to all social policy areas, including health care and post-secondary education.

A Framework to Improve the Social Union for Canadians places a number of restrictions on the federal government's spending power. With respect to any new Canada-wide initiative in health care, post-secondary education, social assistance or social services funded through intergovernmental transfers, the federal government will work collaboratively with all provinces and territories to identify Canada-wide priorities and objectives; provinces and territories will then determine the detailed program design and mix best suited to the needs of their jurisdictions (6). Such initiatives will not be launched without the agreement of a majority of the provinces.[5] "A provincial/territorial government which, because of its existing programming, does not require the total transfer to fulfill the agreed objectives would be able to reinvest any funds not required for those objectives in the same or a related priority area" (6). Finally, governments will agree on an accountability framework for new initiatives, and provinces and territories will only receive their share of available funding if they meet the agreed Canada-wide objectives and respect the accountability framework. This differed substantially from the provincial consensus position, which would have required that the majority of provinces consent to any "new or modified Canada-wide program in areas of provincial jurisdiction", thus having broader application than the final provisions of the agreement, which applied to health, post-secondary education, social services and social assistance (Gagnon and Segal 2000, 236). Further, the federal government would provide full financial compensation to any province or territory choosing not to participate, provided it carried on a program or initiative that addressed the priority areas of the Canada-wide

[5] While this could theoretically be the six smallest provinces, comprising just 15% of Canada's population, political reality suggests the federal government will require the support of enough provinces to also represent the majority of Canada's population.

initiative. This too provided more flexibility to provinces and territories than the final agreement, which made opting-out conditional on existing programming. Finally, there was no suggestion of an accountability framework in the provincial consensus on the federal spending power, again indicating the importance of this issue to the federal government. In the case of direct federal spending on individuals and organizations in health care, post-secondary education, social assistance and social services, the federal government agrees under the Social Union Framework Agreement to give at least three months' prior notice and offer to consult with governments.

The spending power section of the agreement is followed by guidelines for a dispute resolution process that will apply to commitments on mobility, intergovernmental transfers, interpretation of the *Canada Health Act* principles, and any new joint initiative (7). The dispute settlement mechanism will operate primarily at the sectoral level (e.g. Health Ministers), and may involve third parties for fact-finding, advice, or mediation. The mechanism included in the framework is very vague, essentially stringing together the various elements in the same order they have been listed above. Issues including the participants in the dispute (multi-lateral or bilateral) and the step-by-step process for resolving a dispute all remain unresolved.[6] Fact-finding or mediation reports may be made public, and any government can require a review of a decision or action one year after it enters into effect (8). Finally, the agreement concludes with a commitment for governments to jointly review the agreement and its implementation, and make appropriate adjustments by the end of its third year.

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[6] Provinces and territories have tried to engage the federal government, through the Council on Social Policy Renewal, in efforts to clarify the dispute settlement mechanism. The federal government has refused to participate, and at the end of May, the Provincial/Territorial Council agreed on a possible

There should be little surprise that the final terms of the agreement were unacceptable to the Government of Quebec. The Quebec Minister of Canadian Intergovernmental Affairs, Joseph Facal, offered a comprehensive explanation of why Premier Bouchard refused to sign in an op-ed piece in *La Presse* on February 18, 1999. Ultimately, the Government of Quebec believed the social union framework agreement would not positively influence the evolution of the Canadian federation because of its centralizing nature (Facal 1999, B3). From the Government of Quebec's perspective, the agreement did not achieve many of its fundamental objectives: clarifying primary provincial responsibility for social programs, ensuring stable funding from the federal government, and limiting the federal spending power. In the end, the agreement did not recognize the primary responsibility of the provinces, and Facal argues, actually makes policymaking in social areas a joint responsibility. The Government of Quebec also believes that for the first time provinces have clearly recognized the federal government's spending power, and have thus enhanced its legitimacy and continued use.[7] In addition, the limitations on the federal spending power offered in the agreement do not meet Quebec's traditional demands in this area. That is, the social union framework does not allow for provinces to "opt out" of federal programs in areas of provincial jurisdiction with full, unconditional compensation. Instead, provinces must demonstrate they are meeting the objectives of the Canada-wide program, and then must devote their share of the funding to other programs that meet the same objectives. However, even these conditions for opting out only apply if there is an existing provincial program in place

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process based on the SUFA model. This was released as part of the "Progress Report to Premiers" communiqué at the 2000 Annual Premiers' Conference.

that meets the pan-Canadian objective. Without a pre-existing provincial program, there is no right to opt out, making this "gain" little more than a paper tiger in the eyes of the Quebec government. Facal states that far from reflecting the specificity of Quebec, the social union framework agreement is fundamentally a tool that will lead to a uniform Canada. He concludes that the Government of Quebec refused to sign the agreement not because of a sovereignty plan, but because it has a different conception of Canada and the *Constitution Act, 1867* than those who signed the agreement.

Confronted with Quebec's refusal to sign the agreement, the federal government sought to pull Quebec into the orbit of the Social Union Framework anyway. This was preceded, however, by an initial hard-line approach by the federal Minister of Intergovernmental Affairs, Stéphane Dion, who indicated that if Quebec refused to comply with the objectives and accountability framework agreed to by the federal government and a majority of the provinces for a new Canada-wide initiative, it would not receive its share of the federal funds (Dion, McLellan, and Rock 1999, 11). This position softened considerably when the Minister rose in the House of Commons on February 10, 1999 to deliver a Ministerial Statement on the topic of the social union. In it he outlined each of the elements of the agreement, and proposed how the federal government saw these relating to Quebec. Dion stated that the federal government is committed "within the limits of its constitutional powers... to ensuring that Quebeckers benefit from the promotion of [the principles in the agreement] as much as other Canadians", and expressed hope the Government of Quebec would participate in discussions on mobility (Canada 1999b, 15:00). He committed the federal government to

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[7] While the Meech Lake Accord contained provisions regarding the federal spending power, Facal argues that Premier Bourassa had taken steps to ensure that the Accord did not contain any recognition of the

working in partnership with the Government of Quebec, as well as governments which had signed the agreement, and to respecting the limitations on the federal spending power to ensure that all governments, including Quebec, benefit from the process outlined in the agreement. Finally, the Government of Quebec was invited to use the new dispute resolution process, and participate in the review of the framework agreement in three years time. This suggests a very peculiar arrangement for the government of Quebec. The federal government would do its utmost to extend the perceived benefits of the agreement to Quebec, although there would be no obligation on the province to adhere to the terms of the agreement. For example, Quebec would benefit from the limitations on the federal spending power, and could conceivably, if it wanted, be one of the majority of provinces consenting to a new federal initiative. Quebec will benefit from this provincial "gain" without assenting to an enhanced federal role in provincial policy development under section three of the agreement.

Premier Bouchard's decision not to sign the agreement creates a form of distinct society status, or asymmetrical federalism, for Quebec (Gibbins 1999, 216-7). In terms of the principles at the beginning of the framework agreement, the Government of Quebec has decided they will not be bound by them. While it is certainly open to debate the degree to which these principles will have any serious impact on any government, by not agreeing to the framework, the Government of Quebec exempts itself from these principles, and precludes them from having Canada-wide political significance. The mobility commitments in the agreement present a more significant way in which Quebec will assume distinct status. The Government of Quebec has not agreed to drop existing residency-based policies or practices in the areas of health, post-secondary education, and

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federal spending power and safe-guarded the powers of the provinces.

social services and social assistance within the next three years, nor has it agreed not to create barriers to mobility in new social programs. This means that social programs in Quebec may have explicit residency requirements or other provisions that inhibit mobility in Canada, as is currently the case where differential tuition fees are charged to out-of-province students attending Quebec universities. While it is reasonable for constituent governments in a federation to include residency requirements as part of the complex mix of public policy choices they make, the difficulty in this instance is that all other constituent governments in the Canadian federation, as well as the central government, have agreed not to do this.[8] By maintaining this policy lever at its disposal, the Government of Quebec quite clearly separates itself from the other governments in Canada.

This separation will be deepened if the Government of Quebec does not participate in the joint planning of social policy initiatives envisioned under the framework agreement. The provisions of the fourth section of the agreement, which call for joint planning to identify priorities for collaborative action, and collaboration on the implementation of these priorities, will result, by virtue of including the federal government in areas of primary provincial jurisdiction, in more uniform social policies across Canada. These provisions must be recognized as being separate from section five, which deals with the federal spending power. Section four envisions joint policy development in provincial jurisdiction without any financial commitment by the federal government, as has been the case with *In Unison* and the NCA. Such initiatives may become the rule under the framework agreement, rather than the exception, thereby

[8] The legitimacy of residency requirements is recognized in the framework agreement, which allows existing barriers to be maintained if they can be "demonstrated to be reasonable" (Canada 1999a, 2).

confirming the assessment of the Quebec Minister of Intergovernmental Affairs, that the framework agreement is a centralizing document. Likewise, the emphasis on outcome measurement also strengthens the federal role in new initiatives. By not signing the agreement, however, Quebec is not compelled to participate in any of these initiatives. Again, Quebec's desire not to work in concert with other governments in the development of national social programs is a legitimate and justifiable choice in a federation where constituent governments are primarily responsible for social policy. As with the mobility provisions of the agreement, asymmetrical federalism for Quebec results primarily because the province is able to stand outside joint social policy initiatives undertaken by the other orders of government. Thus while the federal government and other provinces and the territories may undertake a national initiative in support of children, Quebec has absented itself from any such policy initiative by not signing the social union framework agreement. The result is 9-1-1 social policy, where the nine English-speaking provinces (along with the territories) participate in social policy initiatives with the federal government, while Quebec is outside of the fold.

This same possibility exists for new national programs that are developed under the spending power provisions of the framework agreement. Such programs will not be undertaken without the support of a majority of provinces for the objectives of the new national initiative, and then provinces will implement programs within their jurisdictions that meet those objectives. An accountability framework that ensures federal money is spent in the designated area will also accompany such initiatives. Within these guidelines, provinces and territories will develop programs and services that meet the needs of their local citizenry and their experimentation will provide working examples of

a range of responsive policy choices. The federal government calls this a "race to the top" among provinces and territories (Canada 1999c, 1). The notion of a race to the top implies, consistent with the logic of performance measurement, that as the "best" policy approaches are revealed they will be introduced by other jurisdictions. Asymmetrical status for Quebec may again be strengthened because there is no compulsion for the province to develop programs as part of any such national initiative, nor to participate in an accountability framework.

In order to meet Dion's commitment that Quebec benefit from the federal spending power commitments (no matter how weak they may appear in the eyes of the Quebec government), the federal government will have to develop a method to ensure that federal funding for new shared-cost programs can flow to Quebec. A likely mechanism can be found in the example of the EAPD. In that instance a multilateral framework was agreed to by jurisdictions, followed by bilateral agreements. Quebec, which had refused to support the multilateral framework, concluded a bilateral agreement with the federal government that is substantively different than the multilateral framework. If a new national program is ever launched under the auspices of section 5 of the SUFA, this will likely be the means to ensure Quebec receives its share of the federal funding. Quebec could receive all of the benefits of any new national initiative developed under the social union framework agreement (federal money), without assuming any of the responsibilities that have been agreed to by the other provinces.

While Quebec has managed to restrict the federal government's role in areas of provincial jurisdiction, implicitly recognizing a dualist vision, other provinces seem to have invited the federal government's participation. An interesting corollary of this is the

fact they've done so for very little money; traditionally cash has been a significant factor for the federal government to play a role in areas of provincial responsibility. The NCB clearly doesn't entirely conform to this trend, as the federal government directly funds the Canada Child Tax Benefit while provinces and territories administer their own "reinvestments". In addition, by July 2000 the federal government had invested $1.7 billion in the NCB (Canada 2000b, 3). This is certainly not the case, however, with the National Children's Agenda and *In Unison*. Both are simply vision documents, with no funding attached. However, in both cases provincial governments have agreed on basic common policy directions for future work, and to work towards common outcome measures with the federal government. Federal funding to the provinces has only occurred with EAPD, which has an annual budget of $168 million. However, even this is not new funding, as it is a replacement for the VRDP program. Thus in the latter half of the 1990s, following significant reductions in its funding for provincial social programs through the CHST, the federal government has nonetheless laid the groundwork for a stronger federal role in areas of provincial jurisdiction for a fraction of the funds cut from the CHST. This presents a significant departure from the 1960s, when the categorical programs gave the federal government a role, but Ottawa had to pay for it. It is of little wonder that Quebec has refused to participate in these initiatives.

This evolution of the Canadian federal system has been termed "collaborative federalism". This differs from previous eras of cooperative federalism because it embodies "a greater respect for the idea that the two order of government should relate to one another on a *non-hierarchical* basis" (Lazar 1997, 24). The federal government is not imposing conditions on the provinces as it did with the categorical programs of the

1960s, but rather is negotiating agreed upon policy priorities and approaches with them. At the end of the day, however, the result is remarkably similar, as the federal government exerts a role in areas of provincial jurisdiction, with only Quebec successfully limiting the federal government's role. In fact, it may be that the combination of joint policy setting and performance measures are a more intrusive combination than anything contemplated in the 1960s. Certainly, they imply a limited respect for the role of provincial governments in meeting the different needs of their citizens across Canada. While recognition of the legitimate provincial role was a defining feature of the 1960s, that does not seem to be the case currently. Instead, the federal government seems determined, with provincial consent, to create a role for itself in provincial policy development to ensure increasingly common social policies across Canada. In this way, collaborative federalism seems very much to be a variant of the centralizing federalism vision of Canada.

The 1995 federal budget was a watershed in federal-provincial relations. The dramatic cuts in federal transfers to provinces for social programs unleashed a startling chain of events. Provinces and territories sought to take a leadership role in the renewal of social policy. The initiatives undertaken – EAPD, the NCB, NCA, *In Unison*, and the Social Union Framework Agreement, as well as environmental harmonization – had the perverse effect of increasing the policy development role of the federal government in areas of provincial jurisdiction, in concert with reduced federal funding. The federal government took advantage of these initiatives to reassert some of the authority it had lost with the introduction of the CHST. In fact, this evolution recalls the days of the categorical programs of the 1960s, which preceded the CAP. Not surprisingly, the

Government of Quebec has refused to engage in these processes, just as it opted out of the categorical programs in the mid-1960s. In doing so, Quebec has created a form of distinct society for itself. At issue is not the extent to which Quebec's current policies are inconsistent with other provincial approaches. Rather, Quebec has created the room to pursue into the future very different policy approaches than those available to the other provinces in co-operation with the federal government. The implications of this evolution will be considered in the following chapter.

Chapter Six: Conclusion

Canada has entered the year 2000 with forty years of wrangling over competing constitutional visions under its belt. Prompted by the emergence of Quebec nationalism in the early 1960s, the federal government sought to respond to Quebec's desire that a dualist vision of Canada take precedence. This vision encountered, at various times, stiff opposition from competing visions, including equality of the provinces, rights-based citizenship, and nationalizing federalism. Political leaders have sought to balance these visions while trying to address Quebec's demands, either through interstate or intrastate approaches. The 1990s was no exception, although it is clear that the decade was dominated by two very different approaches. The first half of the decade was characterized by constitutional and quasi-constitutional efforts to reconcile the dualist vision of Canada with competing visions, either through interstate or intrastate arrangements. In the latter half of the decade, Quebec's place in Canada was less obviously on the agenda of governments. However, through a series of non-constitutional policy developments, the dualist vision has been given implicit recognition, along with a variant of centralizing federalism. Quebec has refrained from entering into a number of intergovernmental initiatives with the federal government, the other provinces, and the territories. While these initiatives have increased the federal role in areas of provincial jurisdiction and enhanced the likelihood of common policy approaches by governments, Quebec has given itself, by refusing to take part, the space to develop policy responses with much greater independence than the other provinces. Thus while political leaders throughout the 1990s were, in some measure, concerned with addressing the national unity issue, the latter part of the decade effected the most meaningful change.

The implications of this evolution, particularly for the future of the Canadian state, will be considered in this chapter.

The first half of the 1990s was dominated by constitutional discussions, although the federal government also pursued non-constitutional initiatives. The constitutional approach would have ensured that all Canadians would be aware that Quebec had a special place in the federation as one of two nations in the Canadian state. Constitutional discussions were preceded by the intergovernmental Canada-Quebec Accord on Immigration, signed early in 1991 in the aftermath of the Meech Lake Accord. Given that Quebec was home to the only Francophone majority in North America, it was argued that the province needed to have special control over immigration. This implicitly recognized a dualist view of the federation, a message that was further reinforced by the fact that Quebec received a disproportionate share of federal funding and that no other agreements were concluded by the Mulroney government with other provinces. Even when the Chrétien government did negotiate immigration agreements, they were not as comprehensive as Quebec's. Highly visible recognition of the dualist vision was the order of the day with the Charlottetown Accord. Under the Accord, Quebec would have been recognized as a distinct society, although the value of this constitutional entrenchment is unclear, given that it would have occurred with the simultaneous entrenchment of a competing constitutional vision. The Accord also sought to provide additional power to Quebeckers in keeping with the dualist vision. However, in most cases these were focused on intrastate mechanisms that provided additional power to Quebec's representatives in national institutions. Any interstate mechanisms contemplated by the Accord would have further entrenched the equality of the provinces

vision of the Canadian federation, rather than the dualist vision, as all provinces would gain new or enhanced powers. In the aftermath of the Quebec referendum, quasi-constitutional efforts were taken to recognize the dualist vision of Canada. In a motion in the House of Commons, Quebec's distinct society was recognized, and the federal government "lent" its constitutional veto to the citizens of Quebec (as well as Ontario and British Columbia). On the non-constitutional front, the federal government also promised to withdraw from labour market development training and devolve responsibility to all provinces in the aftermath of the Quebec referendum. Again, this final initiative, by devolving responsibility to all provinces, supported a vision of equal provinces, rather than special status for Quebec as one half of the Canadian duality.

While the first half of the 1990s was characterized by a variety of approaches to Quebec's place in Canada, the latter part of the decade was remarkably consistent in focusing on non-constitutional intergovernmental initiatives. In the aftermath of the 1995 federal budget, in which the federal government radically rewrote its relationship with individual Canadians and with provincial governments, a number of federal-provincial/territorial initiatives developed. These included Employability Assistance for Persons with Disabilities, the National Child Benefit, the National Children's Agenda, *In Unison*, the Environmental Harmonization Accord, and the Social Union Framework Agreement. The federal government appears to have used the development of these measures to reassert the role that had been lost with the creation of the CHST in 1995. In particular, governments agreed to joint policy development, and with the exception of the Environmental Harmonization accord, they also committed to accountability frameworks based on performance measurement. Together these two features will ensure an

enhanced role for the federal government in areas of provincial jurisdiction. Given this outcome, there can be little surprise at the third common feature of all of these initiatives: Quebec's decision not to participate in them. By refusing to participate in these initiatives, Quebec ensures special status for itself in two ways. In the first instance, it receives the benefits of the NCB and EAPD programs without formally participating in them. In the second instance, Quebec has ensured that it will be able to pursue a distinct social policy approach, with "its jurisdictional integrity uncompromised" (Gibbins 1999, 217). In the assessment of Roger Gibbins, the "upshot of [the post-referendum initiatives and social union framework agreement] is that the Prime Minister has achieved for Quebec what the majority of Quebec nationalists have sought for the past 30 years – a distinct position within the Canadian federal system in which Quebec is not a province like the others but rather has the de facto status of a separate national community, dealing one-on-one with the government of Canada" (ibid.).

Quebec has also managed to maintain its jurisdictional integrity by refusing to participate in the specific social policy initiatives of the late 1990s. In some ways, these are a throw-back to the categorical social programs of the 1960s, when specific conditions were placed on federal funding for programs in areas of provincial jurisdiction. Since 1996, the federal government has sought to regain the role in social policy it lost with the introduction of the CHST. That the federal government would try to regain a role in the aftermath of turning conditional funding arrangements into a largely unconditional block fund is hardly surprising, as the same thing happened following the introduction of the EPF, with relaxed conditions, in 1977. Seven years later, the federal government created the *Canada Health Act*, which imposed conditions

on the funding provinces received from the federal government for health care. A superficial similarity with the 1960s is the focus on individual policy initiatives, which is similar to the structure of the categorical programs. In addition, the evolution of federalism in the late-1990s seems to promote a stronger role for the federal government than existed under CAP, which ultimately did little to promote common provincial approaches to social policy. Instead of imposing specific federal conditions, as was the case with the categorical programs, the federal government has exerted influence by securing a role in setting policy direction and helping to measure the outcomes of government interventions. Together these provide a significant role for the federal government.

The 1960s and the 1990s

The evolution of intergovernmental relations in the 1990s offers a number of interesting comparisons with the mid-1960s, the era outlined in Chapter Two. Such a comparison is much more fruitful if the 1990s are considered in two parts, divided between the events of the first half of the decade, including the response to the 1995 referendum, and the events that occurred after 1995. The first half of the decade has a number of parallels with the 1960s. The Quebec government continued to derive significant power from nationalist forces in the province, to the extent that the province effectively defined the constitutional process that began after the Meech Lake Accord failed. Likewise, there continued to be a belief that the nationalist forces in Quebec could be accommodated, primarily through constitutional change. Even the Chrétien government's response following the 1995 referendum, however grudging, can be understood in this light. The post-referendum actions were based on the promises made

in the speech the Prime Minister gave at Verdun in the dying days of the referendum campaign. Those promises were made in the belief that efforts to accommodate nationalism in Quebec were required to win the referendum campaign. A further similarity is that the conservative government of Brian Mulroney also had very good relations with the Liberal government in Quebec, and there seems to have existed a significant level of trust between Bourassa and Mulroney. Finally, governments continued to grapple with how to reconcile equal provinces with a dualist vision of Canada. Arguably, they had much less success than their predecessors in the 1960s who developed a number of stable and lasting compromises, particularly with the Canada Pension Plan. This is, in part, connected to the forum for intergovernmental discussions. The asymmetrical arrangements that developed in the 1960s were not developed as part of formal constitutional revisions, which experience has shown to be a very difficult process for recognizing the dualist vision. This was a significant difference from the early 1990s, which was dominated by the Charlottetown Accord.

The latter part of the 1990s saw a return to non-constitutional initiatives, which enabled governments to more effectively balance the dualist and equal province visions of Canada, just as their predecessors did thirty-five years ago. Their success in this area is the main similarity with the trends outlined in Chapter Two. Indeed, even this success differs from the openness the federal government displayed in the 1960s in responding to the dualist vision. In the late 1990s this vision prevailed, but primarily through subterfuge, as no political leaders explain their actions in this way. Instead, people saw governments working together to solve problems with Quebec standing on the sidelines. The fact that this vantage point may offer Quebec special status is not considered. It is

not at all clear, however, how stable this evolution will be. The degree to which this really represents an accommodation of Quebec is uncertain, as it is not acknowledged as such. Nor is it clear to what degree this evolution is driven by a fear of Quebec nationalism. Certainly in many respects the Liberals in Ottawa have taken a strong role in challenging Quebec nationalism, and many of the nationalist assumptions about how Quebec could ultimately separate from Canada. This stance does not readily lead to the conclusion that the threat of nationalism provides the government of Quebec a great deal of power in dealing with the federal government. And yet Quebec remains the only province that is able to get a special deal. Another much clearer difference between the mid-1960s and the years since 1995 is seen in the role of government. Unlike the 1960s, when all governments were growing, a fact that created some comfort for the federal government in leaving provinces to provide the programs demanded by Canadians, the 1990s were instead characterized by serious retrenchment by both orders of government. This in turn has helped to contribute to the lack of trust that exists between federal and provincial politicians, as there is no guarantee that federal funds won't be used to simply offset provincial funding cuts or provide a provincial tax cut. As a result, the trust that existed between government in the 1960s is no longer present. Overall, the latter part of the 1990s approached the dualist vision of Canada in quite a different manner than both the earlier half of the decade and the mid-1960s.

Constitutional Visions

From the preceding analysis, it should be clear that the three constitutional visions focused on federalism were in competition with one another throughout the 1990s. Less important has been the rights-based constitutional vision, the relevance of

which was limited, unsurprisingly, to the debate around the Charlottetown Accord. At that time, significant opposition developed around the recognition of the distinct society clause because of concerns that it might undermine the Charter rights of citizens living in Quebec. In addition, concerns were raised that the entire Canada Clause, enumerating the specific features of Canada, itself created a hierarchy of rights that privileged certain Canadians at the expense of others. While this vision was a significant part of the debate around the Charlottetown Accord, it played a much lesser role in the intergovernmental negotiations that have been driven by the other constitutional visions. The explanation for this is straightforward: the shape of federalism is not simply defined by the constitution, as non-constitutional changes can have a significant impact on the federal system. The rights of Canadians, however, are entrenched in the *Charter of Rights*. They will supercede any non-constitutional change, therefore diminishing the relevance of non-constitutional initiatives for the proponents of this vision. To the extent that non-constitutional change has implications for this vision, its supporters are placed at a disadvantage as the machinery of executive federalism effectively keeps them well away from any intergovernmental negotiations.

Of the visions that relate to federalism, the big loser in the 1990s was equality of the provinces. This assessment would not necessarily hold had Canadians accepted the Charlottetown Accord, as that document strongly supported this constitutional vision by extending nearly all of Quebec's demands for greater power to all provinces. The Accord failed, however, and the subsequent years saw little to strengthen this conception of Canada. This is not to say that governments outright rejected the notion of equality of the provinces, or even really backed away from it. The only outright contradiction of this

notion is the distinct society motion and regional veto adopted by the federal government in the aftermath of the 1995 referendum. Other than that, the notion of equality of the provinces remains largely undisturbed. Indeed the notion of non-hierarchical collaborative federalism as understood by Lazar rests on the notion not only that both orders of government are equal, but also that the provinces are equal with one another. While this remains the official stance of governments in Canada, this analysis has shown that the 1990s, particularly the latter part of the decade, have been dominated by two other constitutional visions: centralizing federalism and dualism. Thus equality of the provinces has been the loser not so much because it was explicitly rejected, but because other constitutional visions have been given greater prominence.

Centralizing federalism was nowhere to be seen in the Charlottetown Accord. The federal government had no real agenda other than to secure a deal, and was content to vacate fields of provincial jurisdiction and agree to limits on the federal spending power. This continued to be the case under the early Chrétien government, as the 1995 budget took the federal government out of many areas of Canadians' lives. In light of this, it is somewhat surprising that centralizing federalism has been pursued so effectively since then. The federal government, in developing intergovernmental initiatives with the provinces (which implicitly endorses the concept of equal provinces) has structured these initiatives to ensure a strong role for the federal government in areas of provincial jurisdiction. In almost all multilateral initiatives, governments have agreed to jointly set objectives and priorities, and work together to implement them. What this practically means is that the federal government will be able to assume a joint policy development role with provincial governments in areas of provincial jurisdiction. In addition,

governments have agreed to work together to measure performance and outcomes to ensure accountability for public funds. This further supports a strong federal role as the federal government helps to define what is measured and how.

The focus on accountability and performance measurement also sets the stage for the federal government to effectively reconditionalize any funds it provides for social programs. In this new approach, the conditions for federal funding won't be dependent upon simply meeting federal criteria to receive the funding. Rather, the conditions will relate to performance. Arguably the first step in this evolution has been taken in the commitment of all governments to measure performance, no matter how broadly. Even the commitments to measure societal outcomes serve to condition governments to performance measurement. In addition, the data generated by these measures can be used, if the federal government chooses, to apply public pressure for program change. From here, it is a relatively small step to get to the performance measurement of EAPD. In fact, it is difficult to imagine, given the accountability framework of EAPD, that any new initiative contemplated under the umbrellas of NCA and *In Unison* will not include measures that address the performance of provincial governments in delivering programs with federal funding. Certainly the indication is that the NCB is heading in this direction as the performance indicators for reducing overlap and duplication will consider the provincial program reinvestments. In addition, the provision for an annual joint plan under EAPD based on the results will provide the federal government with an opportunity to ensure the increasing comparability of provincial programs. All provinces will be engaged in discussions on their joint plans with the federal government. As the common link between all provinces, the federal government will be in a strong position

to promote certain policy options, presumably those that are seen to be most effective. The result will be increased provincial policy convergence. This outcome of performance measurement should not be surprising, given that the notion of best practices implies there is indeed a single best way to deliver a government policy. Surprisingly, this possibility has been given minimal attention. Nonetheless this evolution is far more significant than the continued fealty that is paid to the notion of equal provinces.

Even more significant again is the triumph of the dualist vision of Canada in the last decade. The 1990s began with acrimonious debate over the Meech Lake Accord, and the dualist vision of Canada it would entrench in the constitution. This debate was repeated again over its successor the Charlottetown Accord, which was also doomed. It could reasonably be expected, given the outcome of both of these efforts at constitutional renewal, that Canadians would not support additional efforts at recognizing the dualist vision of Canada. The reality is that the evolution of federalism in this decade, outside of the constitutional debates, has supported the dualist vision but seldom framed the public debate in this way. While there have been some non-constitutional initiatives that are clearly based on a dualist vision of Canada, these were the exceptions. The Immigration Accord was signed in the Meech Lake-Charlottetown interim, and the quasi-constitutional initiatives taken after the 1995 referendum came as Canadians were still recovering from the shock of the referendum results. The special role they acknowledge for Quebec has not been the norm. A refusal to positively address dualism has been the operating procedure in the latter part of the 1990s when, ironically, Quebec has made its greatest gains in institutionalizing this vision of Canada. Quebec has made these gains

not by asking for any specific recognition from the rest of Canada, but by simply refusing to participate in a range of intergovernmental initiatives that increase the federal role in areas of provincial jurisdiction. By opting out, Quebec effectively creates the so-called 9-1-1 federalism, where nine of the provinces work together with the federal government, and one province, Quebec, remains separate. This is significant because Quebec has effectively given itself the room to pursue unique policies if it chooses to do so.

What are the implications of Quebec creating this room for itself? The most obvious is that Quebec will indeed take advantage of this space it has created for itself to work independently of other jurisdictions. Quebec will develop an increasingly distinct approach to social policy issues that is unlike that in the rest of Canada. This is already seen in Quebec's approach to family policy, and can be expected to extend into other policy areas as well. Indeed, if the Social Union Framework Agreement does set the standard for intergovernmental relations, this will become the norm in other policy sectors as well. Even more important is the fact that Quebec will pursue a distinct policy approach as the policies in the other provinces become increasingly similar. In a federal system it is to be expected that in areas of provincial jurisdiction policies will differ; that is, after all, the point of a federal system of government. Likewise, if the policies of all provinces were converging it would not necessarily be of great import. The situation that could potentially develop as a result of the changes to Canadian federalism over the last few years is radically different, however. All of the provinces, except for one, have agreed on common approaches with the federal government to key social policy initiatives in areas of their jurisdiction. This has the potential to create substantial asymmetry between the citizens of Quebec and their counterparts in the rest of Canada.

The Government of Quebec has clearly achieved a form of distinct society for the province by refusing to participate in intergovernmental initiatives. An important consideration is the extent to which this has been by accident or by design. Certainly, it is possible to conclude that this is an accidental consequence that governments had no control over. After all, could other Canadian governments reasonably be expected not to pursue initiatives they perceive as beneficial, simply because Quebec refuses to participate? To fall into this line of reasoning seriously undermines the significance of the events that transpired since the 1995 federal budget. Quebec's refusal to participate in intergovernmental social policy initiatives may have been beyond the control of the other governments in Canada, but their decision to go ahead without Quebec was certainly their own to make. This is particularly true in the case of the federal government. Less intrusive methods of federal involvement could have been chosen, if it was important to the federal government to secure the agreement of Quebec. In addition, it seems impossible to believe that the federal government is unaware of the practical implications of Quebec's refusal to participate. The national unity question – the place of Quebec within Canada – is the overriding obsession of the federal government. As Cairns argues, this makes sense, as the first priority of any government is to maintain its existence (1995, 232-3). Thus, if the future unity of Canada is the federal government's overriding goal, there can be no doubt that the implications of Quebec not being part of recent intergovernmental initiatives were not only well understood, but accepted by federal leaders. This suggests that federal acquiescence to intergovernmental initiatives that exclude Quebec may be part of a coherent strategy to implement a dualist vision of Canadian federalism through asymmetrical arrangements.

In effect, the federal government seems willing to have a very different relationship with the citizens of Quebec than exists with citizens in every other part of Canada. The federal government's motivation in pursuing this approach is not clear. Is it that the Liberal Party of Canada is unwilling to let its social policy ideals be stymied by a separatist government in Quebec? It may in fact be this simple, as the Liberal government attempts to satisfy the expectation of the Ontarians and other Canadians who elected them *en masse* in 1993 and 1997. In addition, the desire for visibility – that the Liberal party be seen by its constituency to be actively involved in the Canadian social policy agenda – means that the federal government is unwilling to contemplate less intrusive means of supporting provincial social policy development. The federal government must be seen to have a role in social policy. This creates the greatest irony, however, because the Liberal dreams of visibility are fed as much by the need to be seen to be relevant to Quebeckers as to other Canadians. The chosen approach, however, has had the perverse impact of increasing federal visibility everywhere but Quebec. The longer-term implications of the decision by the Liberal government to let Quebec go its own way must be considered.

The Future

How sustainable is this brave new world of 9-1-1 federalism? There are really two facets to this question: the degree to which the continued endurance/development of 9-1-1 arrangements is possible, and the impact should they endure into the future. The Canadian federal system has entered the year 2000 very much in flux. At the federal level, the Canadian Alliance has emerged as a distinct alternative to the governing Liberal Party. The Alliance party has made respect for provincial rights an important part of its

party platform. As a result, it seems less likely that a potential Alliance government would promote initiatives that the Government of Quebec would refuse to participate in. Likewise, in the event the Parti Quebecois were to be replaced as the Government of Quebec, the development of 9-1-1 federalism may be further arrested. While it is easy for the federal and provincial governments outside of Quebec to agree to initiatives that are not supported by a separatist government, this dynamic would cease to exist if the federalist Quebec Liberal Party were elected. Governments outside Quebec would be under tremendous pressure to ensure a federalist Quebec government was not marginalized. It also seems unlikely that the arrangements developed in the last few years would have been possible if any other province, along with Quebec, had refused to participate. 8-2-1 federalism is not an option. Quebec is likely the only province that can realistically refuse to participate while the other provincial governments cooperate with the federal government; the provincial block is likely only possible if it includes all nine of the provinces outside of Quebec. If any other province takes a strong stand on questions of provincial jurisdiction, collaborative arrangements without Quebec will likely cease. Thus there are three important factors that will affect the continued existence of the current arrangements and whether they are replicated into the future.

But suppose these arrangements do endure. Certainly there has been limited discussion or debate about whether the products of collaborative federalism can continue indefinitely, or whether they will create unsettling pressures on the federal system. What happens in five or ten or fifteen years time if Quebec's social policy becomes increasingly different than the rest of Canada? This is a particularly important question given the role of social policy in defining Canadian citizenship. In the view of the federal

Minister of Justice, who represented the federal government during the Social Union Framework negotiations, "Canada's social programs reflect and give expression to our fundamental beliefs and values and help define us as a country" (McLellan 1998, 6). While Canadians currently accept that Quebec applies differential tuition fees to out-of-province post-secondary students studying in Quebec, and that all provincial governments except Ontario lack reciprocal billing arrangements for health care with the Quebec government, how much difference is too much? Again, this question would not be that important if all provinces had very different policy approaches. However, while the rest of Canada becomes increasingly similar in the social policy field, Quebec will be increasingly different. There is an issue because Quebec will be an outlier. If Quebec proceeds in an increasingly different direction, and there are impacts for other Canadians, it would seem reasonable to conclude that the good will that exists towards Quebec in English Canada (such as it is) might be diminished.

This may have an important impact because the question of recognition that lies at the heart of Quebec's nationalist movement remains unanswered. To return to Taylor, external recognition is part of the nationalist project because it is a vital part of identity formation (1994, 25). However, as Alain Noel points out in his critique of federalism in the 1990s, formal recognition of the dualist vision has not happened.

> While it is true that collaborative federalism with a footnote creates a form of *de facto* asymmetry, it is not a form of asymmetry that responds to Quebec's demands for recognition or autonomy.... The only autonomy that is enhanced for Quebec is the autonomy of the footnote, the negative autonomy of the non-participation. The Quebec government can be an irritant in the workings of Canadian federalism, a grain of sand in the mechanics of Canadian nationalism, but this is hardly an achievement worth celebrating (Noel 2000, 14-15).

Thus while federalism has evolved in a manner that implicitly recognizes a dualist vision of Canada, there has been no explicit recognition of that fact. Aside from the fact the aspirations of Quebec remain stymied, there is the additional reality that English Canadians have still not accepted the concept of a dualist version of Canada. Dualism has been achieved by stealth, with English Canadians largely unaware of what has happened. There are two possible results. On the one hand, it seems reasonable to postulate that Canadians outside of Quebec will resent the increasing difference between their Canada and Quebec. If Quebec continues into the future to call for recognition of the distinct society, Canadians may well respond that Quebec is already very different, but continue to refuse recognition of duality in Canada. This response would be driven by an exasperated "Their demands never end – what more can we give them?" from Canadians outside Quebec. On the other hand, things could fall the other way. Maybe Canadians won't resent the growing differences between Quebec and the rest of Canada, and will ultimately come to the conclusion that distinct society status isn't all that bad, given the differences that exist. However, this response could go one step further and promote increasing indifference in English Canada in the event of another sovereignty referendum. Canadians could conclude that the province is so different that it really is no longer like the rest of Canada anyway, and it might be best all around if it did become a separate country. All of these scenarios are possible, and it is impossible to predict which, if any, may come to pass. What is clear, however, is that the approach of the last few years carries a number of risks.

A further risk is the impact that this evolution may have in Quebec during a subsequent sovereignty referendum campaign. Certainly, the obvious conclusion is that

if social policies are a key part of what holds Canada together, the possibility that Quebec's social policies may evolve in a very different way than those in the rest of Canada suggests that the ties that bind Quebeckers to the rest of Canada are further frayed. While this may be a plausible conclusion, it must be remembered that Quebeckers have never really looked to the central government to lead in the area of social policy (Banting 1997, 60). In the analysis of Ken McRoberts, the "concerted post-war effort of Ottawa to assume the mantle of Canada's national government reinforced Quebec City in its historical role as government of the French-Canadian nationality..." (1997, 27). As areas of provincial jurisdiction, the social policy fields have been rigorously protected by successive Quebec governments. This approach was entrenched with the Quiet Revolution, when the "provincial state – the Quebec government manned by competent Québecois – would be the principal engine of social and economic growth" (Dyck 1991, 239). The outcomes of this approach were explored in Chapter Two, as a number of arrangements were concluded that enabled Quebec to opt-out of national programs. Thus it is not at all clear that an increasingly different social policy in Quebec will have that much impact on the views of Quebeckers in a future referendum on sovereignty association. It may be that there is a breaking point when Quebec becomes so different from the rest of Canada that there is no longer any real motivation for the province to stay, or the rest of Canada is perceived to hold Quebec back. It seems more probable, however, that the impact of the recent evolution of the federal system will be felt in English Canada before the effects are manifested in the decisions of Quebeckers in a sovereignty referendum.

The evolution of Canadian federalism in the 1990s raises issues that fundamentally address the future of the Canadian political system. Ultimately, these will only be resolved with the passage of time. What is clear, however, is that a significant change in the Canadian federal system has taken place. The social policies of provincial governments outside of Quebec are likely to become increasingly similar under federal leadership, while Quebec will take advantage of the room it has created over the last few years to pursue an independent social policy. The result will be that Canadians living inside Quebec will have a very different relationship with their federal and provincial governments than Canadians living outside of the province. For those who have concerns about the sustainability of such an evolution and its potential impact on the future Canada, solace can be found in the fact the federation is always evolving and this phase too shall pass. The only question remaining is whether the country will remain intact until it does.

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Examples of possible indicators of key environments and child outcomes

Developmental stages and transitions	Examples of key environments	Examples of child outcomes
Applicable to all ages	**Society** • Physical environment (air and water quality) • Economic environment • Media **Community** • Physical environment (water and sanitation) • Housing (quality, accessibility) • Economic security • Community services • Social or community cohesion • Prevalence of substance use **Family** • Income level and source • Parental employment and education level • Family structure • Positive parenting • Home learning environment (books in the home, reading, TV monitoring) • Food security and nutrition • Work/Family arrangements • Residential moves • Daily exposure to cigarette smoke • Family functioning (including violence in the home)	**Health** • General health status • Chronic illness • Physical and mental disability • Physical activity • Emotional and behavioural problems • Immunization • Mortality (by cause and age group) **Safety and Security** • Injury (by cause) • Reported child abuse and neglect (overall and for children in care) **Learning** • Positive attitude toward learning **Social Engagement/Responsibility** • Social development/connection/aggression
Prenatal to 18 months Key Transition: Through infancy	**Society** • Parental leave arrangements **Community** • Prenatal and early child development supports **Child Care/Preschool/School** • Participation in parent/baby groups • Type and stability of child care **Family** • Parenting (stimulation, support, discipline) • Breastfeeding • Alcohol/tobacco/drug use in pregnancy • Effective use of car seats	**Health** • Birth weight • Infant mortality • Attachment/bonding • Fine and gross motor skills • Fetal alcohol syndrome/effects **Safety and Security** • Injuries • Reported child abuse and neglect (overall and for children in care)

Examples of possible indicators of key environments and child outcomes

Developmental stages and transitions	Examples of key environments	Examples of child outcomes
Ages 18 months to 5 years Key Transition: To learning	**Community** ▪ Safety ▪ Social or community cohesion ▪ Access to recreational facilities (library, play spaces, etc.) **Child Care/Preschool/School** ▪ Participation in preschool/toddler groups ▪ Type and stability of child care **Family** ▪ Connectedness/isolation ▪ Parenting (stimulation, support, discipline) ▪ Effective use of car seats	**Health** ▪ Fine and gross motor skills **Safety and Security** ▪ Injuries ▪ Reported child abuse and neglect (overall and for children in care) **Learning** ▪ Cognitive abilities and behaviour ("readiness to learn") **Social Engagement/Responsibility** ▪ Social development/connection/aggression
Ages 6 to 12 years Key Transition: To adolescence	**Community** ▪ Recreation/leisure opportunities **Child Care/Preschool/School** ▪ Type and stability of child care ▪ School quality including school climate, teacher expectations and academic press **Family** ▪ Parental encouragement, expectations re: school ▪ Parenting (nurturance, monitoring) ▪ Use of seat belts, bike helmets	**Health** ▪ Child's self-esteem ▪ Risk-taking behaviours (smoking, drinking, drugs, sex) ▪ Positive health behaviours (nutrition, exercise) ▪ Suicide **Safety and Security** ▪ Feeling safe in school/neighbourhood **Learning** ▪ Achievement: math, science, reading and writing ▪ Knowledge/awareness of diversity/ culture/citizenship ▪ Positive attitude to learning **Social Engagement/Responsibility** ▪ Positive relationship with (a) caring adult(s) ▪ Respect for authority ▪ Activities out of school/use of free time

Examples of possible indicators of key environments and child outcomes

Developmental stages and transitions	Examples of key environments	Examples of child outcomes
Ages 13 to 18 years Key Transition: To adulthood	**Community** • Opportunities for youth activity (e.g. recreation) and volunteerism/mentoring **Child Care/Preschool/School** • School quality including school climate, teacher expectations and academic press • Programming/guidance for transition from school to work, life skills **Family** • Parenting (nurturance, monitoring, support to independence) • Support for continuing education • Use of seat belts, bike helmets	**Health** • Self-esteem • Teenage pregnancy • Risk-taking behaviours (smoking, drinking, drugs, sex) • Positive health behaviours (nutrition, exercise) • Body image • Eating disorders • Suicide • Sexually transmitted diseases **Safety and Security** • Feeling safe in school/neighbourhood **Learning** • Achievement: math, science, reading and writing • School completion • Knowledge/awareness of diversity/ culture/citizenship • Positive attitude to learning **Social Engagement/Responsibility** • Volunteerism • Community participation • Involvement in criminal/antisocial activity • Detachment (e.g. living on street)

A Framework to Improve the Social Union for Canadians

An agreement between
the Government of Canada
and the Governments
of the Provinces and Territories

February 4, 1999

The following agreement is based upon a mutual respect between orders of government and a willingness to work more closely together to meet the needs of Canadians.

1. Principles

Canada's social union should reflect and give expression to the fundamental values of Canadians—equality, respect for diversity, fairness, individual dignity and responsibility, and mutual aid and our responsibilities for one another.

Within their respective constitutional jurisdictions and powers, governments commit to the following principles:

All Canadians are equal

- Treat all Canadians with fairness and equity
- Promote equality of opportunity for all Canadians
- Respect the equality, rights and dignity of all Canadian women and men and their diverse needs

Meeting the needs of Canadians

- Ensure access for all Canadians, wherever they live or move in Canada, to essential social programs and services of reasonably comparable quality
- Provide appropriate assistance to those in need
- Respect the principles of medicare: comprehensiveness, universality, portability, public administration and accessibility
- Promote the full and active participation of all Canadians in Canada's social and economic life
- Work in partnership with individuals, families, communities, voluntary organizations, business and labour, and ensure appropriate opportunities for Canadians to have meaningful input into social policies and programs

Sustaining social programs and services

- Ensure adequate, affordable, stable and sustainable funding for social programs

Aboriginal peoples of Canada

- For greater certainty, nothing in this agreement abrogates or derogates from any Aboriginal, treaty or other rights of Aboriginal peoples including self-government

2. Mobility within Canada

All governments believe that the freedom of movement of Canadians to pursue opportunities anywhere in Canada is an essential element of Canadian citizenship.

Governments will ensure that no new barriers to mobility are created in new social policy initiatives.

Governments will eliminate, within three years, any residency-based policies or practices which constrain access to post-secondary education, training, health and social services and social assistance unless they can be demonstrated to be reasonable and consistent with the principles of the Social Union Framework.

Accordingly, sector Ministers will submit annual reports to the Ministerial Council identifying residency-based barriers to access and providing action plans to eliminate them.

Governments are also committed to ensure, by July 1, 2001, full compliance with the mobility provisions of the *Agreement on Internal Trade* by all entities subject to those provisions, including the requirements for mutual recognition of occupational qualifications and for eliminating residency requirements for access to employment opportunities.

3. Informing Canadians—Public Accountability and Transparency

Canada's Social Union can be strengthened by enhancing each

government's transparency and accountability to its constituents. Each government therefore agrees to:

Achieving and Measuring Results

- Monitor and measure outcomes of its social programs and report regularly to its constituents on the performance of these programs
- Share information and best practices to support the development of outcome measures, and work with other governments to develop, over time, comparable indicators to measure progress on agreed objectives
- Publicly recognize and explain the respective roles and contributions of governments
- Use funds transferred from another order of government for the purposes agreed and pass on increases to its residents
- Use third parties, as appropriate, to assist in assessing progress on social priorities

Involvement of Canadians

- Ensure effective mechanisms for Canadians to participate in developing social priorities and reviewing outcomes

Ensuring fair and transparent practices

- Make eligibility criteria and service commitments for social programs publicly available
- Have in place appropriate mechanisms for citizens to appeal unfair administrative practices and bring complaints about access and service
- Report publicly on citizen's appeals and complaints, ensuring that confidentiality requirements are met

4. Working in partnership for Canadians

Joint Planning and Collaboration

The Ministerial Council has demonstrated the benefits of joint planning and mutual help through which governments share knowledge and learn from each other.

Governments therefore agree to

- Undertake joint planning to share information on social trends, problems and priorities and to work together to identify priorities for collaborative action

- Collaborate on implementation of joint priorities when this would result in more effective and efficient service to Canadians, including as appropriate joint development of objectives and principles, clarification of roles and responsibilities, and flexible implementation to respect diverse needs and circumstances, complement existing measures and avoid duplication

Reciprocal Notice and Consultation

The actions of one government or order of government often have significant effects on other governments. In a manner consistent with the principles of our system of parliamentary government and the budget-making process, governments therefore agree to:

- Give one another advance notice prior to implementation of a major change in a social policy or program which will likely substantially affect another government

- Offer to consult prior to implementing new social policies and programs that are likely to substantially affect other governments or the social union more generally. Governments participating in these consultations will have the opportunity to identify potential duplication and to propose alternative approaches to achieve flexible and effective implementation

Equitable Treatment

For any new Canada-wide social initiatives, arrangements made with one province/territory will be made available to all provinces/territories in a manner consistent with their diverse circumstances.

Aboriginal Peoples

Governments will work with the Aboriginal peoples of Canada to find practical solutions to address their pressing needs.

5. The federal spending power—Improving social programs for Canadians

Social transfers to provinces and territories

The use of the federal spending power under the Constitution has been essential to the development of Canada's social union. An important use of the spending power by the Government of Canada has been to transfer money to the provincial and territorial governments. These transfers support the delivery of social programs and services by provinces and territories in order to promote equality of opportunity and mobility for all Canadians and to pursue Canada-wide objectives.

Conditional social transfers have enabled governments to introduce new and innovative social programs, such as Medicare, and to ensure that they are available to all Canadians. When the federal government uses such conditional transfers, whether cost-shared or block-funded, it should proceed in a cooperative manner that is respectful of the provincial and territorial governments and their priorities.

Funding predictability

The Government of Canada will consult with provincial and territorial governments at least one year prior to renewal or significant funding changes in existing social transfers to provinces/territories, unless

otherwise agreed, and will build due notice provisions into any new social transfers to provincial/territorial governments.

New Canada-wide initiatives supported by transfers to Provinces and Territories

With respect to any new Canada-wide initiatives in health care, post-secondary education, social assistance and social services that are funded through intergovernmental transfers, whether block-funded or cost-shared, the Government of Canada will:

- Work collaboratively with all provincial and territorial governments to identify Canada-wide priorities and objectives
- Not introduce such new initiatives without the agreement of a majority of provincial governments

Each provincial and territorial government will determine the detailed program design and mix best suited to its own needs and circumstances to meet the agreed objectives.

A provincial/territorial government which, because of its existing programming, does not require the total transfer to fulfill the agreed objectives would be able to reinvest any funds not required for those objectives in the same or a related priority area.

The Government of Canada and the provincial/territorial governments will agree on an accountability framework for such new social initiatives and investments.

All provincial and territorial governments that meet or commit to meet the agreed Canada-wide objectives and agree to respect the accountability framework will receive their share of available funding.

Direct federal spending

Another use of the federal spending power is making transfers to individuals and to organizations in order to promote equality of opportunity, mobility, and other Canada-wide objectives.

When the federal government introduces new Canada-wide initiatives funded through direct transfers to individuals or organizations for health care, post-secondary education, social assistance and social services, it will, prior to implementation, give at least three months' notice and offer to consult. Governments participating in these consultations will have the

opportunity to identify potential duplication and to propose alternative approaches to achieve flexible and effective implementation.

6. Dispute Avoidance and Resolution

Governments are committed to working collaboratively to avoid and resolve intergovernmental disputes. Respecting existing legislative provisions, mechanisms to avoid and resolve disputes should:

- Be simple, timely, efficient, effective and transparent
- Allow maximum flexibility for governments to resolve disputes in a non-adversarial way
- Ensure that sectors design processes appropriate to their needs
- Provide for appropriate use of third parties for expert assistance and advice while ensuring democratic accountability by elected officials

Dispute avoidance and resolution will apply to commitments on mobility, intergovernmental transfers, interpretation of the *Canada Health Act* principles, and, as appropriate, on any new joint initiative.

Sector Ministers should be guided by the following process, as appropriate:

Dispute avoidance

- Governments are committed to working together and avoiding disputes through information-sharing, joint planning, collaboration, advance notice and early consultation, and flexibility in implementation

Sector negotiations

- Sector negotiations to resolve disputes will be based on joint fact-finding
- A written joint fact-finding report will be submitted to governments involved, who will have the opportunity to comment on the report before its completion
- Governments involved may seek assistance of a third party for

- At the request of either party in a dispute, fact-finding or mediation reports will be made public

Review provisions

- Any government can require a review of a decision or action one year after it enters into effect or when changing circumstances justify

Each government involved in a dispute may consult and seek advice from third parties, including interested or knowledgeable persons or groups, at all stages of the process.

Governments will report publicly on an annual basis on the nature of intergovernmental disputes and their resolution.

Role of the Ministerial Council

The Ministerial Council will support sector Ministers by collecting information on effective ways of implementing the agreement and avoiding disputes and receiving reports from jurisdictions on progress on commitments under the Social Union Framework Agreement.

7. Review of the Social Union Framework Agreement

By the end of the third year of the Framework Agreement, governments will jointly undertake a full review of the Agreement and its implementation and make appropriate adjustments to the Framework as required. This review will ensure significant opportunities for input and feed-back from Canadians and all interested parties, including social policy experts, private sector and voluntary organizations.

Canada

Ontario

Québec

Nova Scotia
Nouvelle-Écosse

New Brunswick
Nouveau-Brunswick

Manitoba

British Columbia
Colombie-Britannique

Prince Edward Island
Île-du-Prince-Édouard

Saskatchewan

Alberta

Newfoundland and Labrador
Terre-Neuve et Labrador

Northwest Territories
Territoires du Nord Ouest

Yukon