reform. Talk of secession is once again occurring in Western Australia and there is some interest in the alteration of state boundaries in northern New South Wales.

More important, state governments, particularly those of Victoria and South Australia, are in the midst of an acute fiscal crisis, one that threatens to transform the fiscal arrangements between the commonwealth and the states in a manner that could significantly strengthen Canberra's future role within the Australian federal state. Regional disparities have emerged as a major political issue and Australians are beginning to consider the types of regional equalization programs that are under threat in Canada.

The interesting thing to consider is whether the Australian constitutional debate will have any impact on the inevitable return to constitutional negotiations in Canada. Will republicanism in Australia put the issue onto the Canadian political agenda and thus further broaden and confuse the Canadian debate? Will Australian efforts to transform the fiscal relations between the federal and state governments be picked up as a model in Canada?

Although Canadians to this point have been relatively immune to Australian constitutional influence, those days may be over as the Australian constitutional debate broadens and intensifies.

Roger Gibbins is Professor and Head, Department of Political Science, University of Calgary. Western Report is a regular feature of Canada Watch.

QUEBEC REPORT

Exit the Notwithstanding Clause

by Guy Laforest

The Liberal government of Robert Bourassa is in the process of changing its approach toward language policy. It seems to me that, indirectly, this shift is signalling the advent of a new attitude with regard to the constitution. The new direction looks like an unconditional surrender, a lucid and unmediated acceptance of the 1982 Constitution Act amendments that every Quebec government since that time has considered illegitimate.

Bill 86 was introduced in early May of this year in the National Assembly by the government and by Claude Ryan, the minister responsible for the language file. Its first objective is to bring Quebec legislation in line with the 1988 Supreme Court judgment that declared null and void the dispositions of Bill 101 prohibiting the use of languages other than French on commercial signs. The court had ruled that these sections and their regulations offended the guarantee of freedom of expression in section 2 of the 1982 *Canadian Charter of Rights and Freedoms*. Back in 1988, instead of bowing to the opinion of the court, the Bourassa government chose to adopt Bill 178, maintaining the French-only rule for external signs while allowing some forms of linguistic pluralism inside businesses. To make sure that policy would work, the government used the notwithstanding clause in section 33 of the Charter, shielding legislation from sections 2 and 7 to 15 of the Charter, for a period of five years, renewable through an express declaration.

The government appears to have decided that it simply does not want to use the notwithstanding clause again. This is hardly surprising. Conceded at the last minute in the 1982 constitutional negotiations by Mr. Trudeau to get provincial support for his patriation project, the notwithstanding clause is the thorn in the side of the people's package of Charter patriotism. As Alan Cairns and many others have repeatedly taught us in the past few years, citizens and groups alike, through the granting of rights, have developed a new sense of dignity, an aggressive constitutional self-consciousness. They want their rights to be limited as little as possible by governments.

With the political culture of the Charter penetrating daily more deeply in the hearts and minds of Canadian citizens, the use of the notwithstanding clause is rendered all the more difficult. In the best of times, in post-1982 Canada, the use of the notwithstanding clause is a tricky matter. When you employ it, as is the case with Quebec, to prohibit public signs in the *lingua franca of the modern world* that is also the idiom of the United States of America, things become even tougher. If you add to this a report of a United Nations Committee on Human Rights supporting the philosophy of the 1988 Supreme Court judgment concerning freedom of expression, the whole matter becomes impossible.

If Bill 86 comes out of the legislative process pretty much intact, as it should, the prohibition for languages other than French on public signs will be lifted. Although many observers, including government officials, talk about a return to bilingualism, this expression is not used in the legislation. The new direction

is one of linguistic pluralism with French always as the predominant language. Obviously, some people would love it if Quebec became officially bilingual. We are not there yet, anyway.

Bill 86 will dismantle, or at least substantially reshuffle, the various public bodies in charge of the implementation and supervision of language policy. The Commission de protection de la langue française (affectionately called the language watchdog by the English-speaking media) will be abolished. The other bodies will lose a good chunk of their autonomy and regulatory power. The minister responsible for the file, Claude Ryan for the time being, will issue the regulations that will specify what the marked predominance of French will mean in practical circumstances. Moreover, the government is also prepared to make exceptions allowing immigrant children with learning disabilities to have access to elementary and high school education in English.

The government could have done all that while continuing to invoke the notwithstanding clause. In the aftermath of the October 26 referendum, this would have meant that a "business as usual" attitude was not being followed on the constitutional file. Bourassa's government behaves on the issue of language policy as it did during the Canada Round. If it is inspired by a vision, by principles, it fails to let us know what they are. However, actions by themselves have meanings and convey messages. Bill 86 tells the rest of Canada that an unconditional allegiance to Canadian federalism is the creed of the day in Quebec City.

Guy Laforest is Associate Professor of Political Science/Département de science politique, Université Laval. Quebec Report is a regular feature of Canada Watch.

LEGAL REPORT

THE "PROMISE" OF BALANCED BUDGET LEGISLATION

by Jamie Cameron

For years budget deficits rose, seemingly without concern, at federal and provincial levels of government. Now, as the recession persists, the public debt has become the priority of governments. Premier Rae has delivered a budget that will deflate Ontario's projected deficit of almost $17 billion this year to a more manageable $9 billion. Premier Wells of Newfoundland recently won a provincial election, partly on a platform of fiscal restraint.

New Brunswick and Alberta are the first of Canada's provinces to introduce "balanced budget" legislation. The objective of such measures is to tie government expenditures to revenues and, often, to establish a target for eliminating the deficit. In announcing the initiative, Alberta's treasurer claimed that "[o]verspending and borrowing will [now] end." According to his plan, Alberta's deficit of more than $20 billion will disappear in four years. Ontario's accumulated debt of almost $70 billion may prove more intractable.

The idea of balanced budget legislation was itself borrowed from the Reform party, whose support for the concept may have been inspired by American experience. In 1985, Congress enacted the *Gramm-Rudman-Hollings Act*, which sought to control government spending through pre-established budget targets that would dissipate the deficit by 1991. As well, 48 states have added a balanced budget requirement to their constitutions.

The Gramm-Rudman initiative faltered badly. By 1990 the U.S. deficit had climbed to $200 billion and the national debt was in excess of $3 trillion. What went wrong? The legislation was invalidated in part due to a constitutional snag; the separation of powers did not permit Congress to retain the power of removal over the comptroller general, who was performing an executive branch function.

The real problem, however, was that by circumventing its own legislation, Congress failed to achieve any meaningful reduction of the U.S. debt. The statute was amended more than once to extend the "zero-deficit target year" and enlarge the annual deficit. Congress also discovered it could avoid responsibility for some expenditures by simply excluding them from the Gramm-Rudman formula.

Thus did Congress prove incapable of implementing its own spending restraints. It has since been argued that Gramm-Rudman demonstrates the inefficacy of ordinary legislative measures, and the necessity for an amendment to the constitution that would require the federal government to balance its budget.

Meanwhile in Canada, New Brunswick's legislation simply states that it is the government's "objective" not to allow total ordinary expenditures to exceed total ordinary revenues. Bill 47's statement of principle is not supported by any detailed plan of attack on the deficit or by any explicit mechanism of enforcement. And, although Alberta has employed mandatory language to define its timeline for eliminating the provincial deficit, it remains unclear how that objective will be achieved.

The Alberta treasurer has asserted that "Albertans and their government,