



CANADA WATCH

Practical Analysis of Constitutional and Other Key National Issues

PICKING THE WINNER ON OCTOBER 26 MAY NOT BE EASY

“Yes/no” vote could leave many questions unanswered

by Patrick J. Monahan

With Canadians voting “yes” or “no” to the Charlottetown Accord on October 26, one might have thought that it would be a relatively simple matter to identify the winners and losers. In fact, the outcome may well be far from clear cut and may raise as many questions as it answers.

Here are some of the puzzles and possible uncertainties that may emerge in the aftermath of the vote.

YES VICTORY REQUIRES CLEAR MAJORITIES IN ALL TEN PROVINCES

This first proposition — that the “yes” must win in all provinces — follows from the nature of the Charlottetown Accord.

The vast majority of the Charlottetown Accord only requires the support of seven provinces representing 50 percent of the national population to be enacted into law. But a number of critical elements, including changes to the amending formula and the guarantee of three Quebec judges on the Supreme Court of Canada, require the support of all provinces plus the federal Parliament.

What happens if the Accord is supported in seven provinces representing 50 percent of the popula-

tion, but one or two provinces dissent? Would the “7/50” elements of the Accord be enacted by those provinces whose voters had supported the package?

The likely answer to this question is “no.” The problem is that the removal of the “unanimous consent” elements represents a fundamental amendment of the Accord, and therefore nullifies a “yes” vote based on the package as a whole.

Consider, for example, the position of the province of Quebec in the event that the “unanimous consent” elements in the package are not approved by all provinces. Quebec would be faced with a situation where certain key guarantees — including the Quebec veto over future constitutional changes — were no longer part of the bargain. In effect, the Charlottetown Accord would have been fundamentally amended in a manner contrary to the interests of Quebec. Thus, even assuming that Quebecers approve the package in the October 26 referendum, a “no” vote elsewhere is likely to mean that the Quebec government will refuse to proceed with what will amount to a new set of proposals.

What about the possibility of negotiating some minor changes in the package after October 26 to bring

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on board one or two recalcitrant provinces?

This scenario also seems unlikely. The first problem is that, although we will know how people have voted, we won't know why. Thus it will be impossible to determine what changes would be sufficient to respond to a "no" vote in a particular province. More fundamentally, the moment the package is reopened for one province, the other parties around the table will demand changes of their own. Given the overwhelming constitutional fatigue across the country, the likelihood of restarting the negotiations following October 26 seems highly remote.

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"Not only must the Yes side carry all 10 provinces, it may have to carry them by a clear majority. A razor-thin margin of victory for the Yes (similar to the result in France on September 20) would fuel demands for more time to study and analyze the proposed constitutional amendments."

them by a clear majority. A razor-thin margin of victory for the Yes (similar to the result in France on September 20) would fuel demands for more time to study and analyze the proposed constitutional amendments. These demands for delay and further debate will extend the ratification process until well into 1993, which just happens to be an election year for Ottawa and possibly for Quebec and Alberta.

THE CONSEQUENCES OF A "NO" VOTE

A major component of the Yes campaign has been the argument that a "no" vote means, at best, fur-

ther uncertainty and constitutional wrangling and, at worst, the eventual breakup of the country. Yet it seems difficult to identify the precise consequences of a "no" vote; the consequences will probably vary, depending on which parts of the country say "no." As might be expected, the critical fault line on this issue is the one running between Quebec and the rest of Canada (ROC).

Of all the possible outcomes on October 26, the one that appears the most threatening to the future stability of the country would be a "yes" vote in Quebec coupled with a "no" vote in one or more provinces in ROC. This yes/no split would be a replay of the Meech Lake Accord; Quebeckers (yet again) would have said yes to Canada, only to find themselves rebuffed. This "rejection" would discredit the federalist option and divide the Quebec Liberal Party, with provincial elections looming just over the horizon.

"DOUBLE NO" MEANS TROUBLE

A "double no" result ("no" vote in Quebec coupled with a "no" vote in one or more provinces in ROC) would appear only slightly less problematic. The immediate aftermath of this result would be a temporary ceasefire on the constitutional front. But there would be little doubt that the constitutional issue would resurface in the near future. Quebeckers would then be faced with the reality that a constitutional agreement with the rest of the country is highly unlikely. In effect, Quebec would be forced to choose between continuing with the constitutional status quo or unilaterally opting for some radical new arrangement. Remember that the only voice defending the status quo in Quebec these days seems to be that of Pierre Trudeau.

The final possible scenario involves a "yes" vote in ROC coupled

with a "no" vote in Quebec. As with the other "no" scenarios sketched above, this result would necessitate a further round of constitutional negotiations sometime in the next two or three years. But at least in this instance, it would be impossible to argue that Quebec had been "rejected" in this round of negotiations. This would improve the chances of reconstructing some new package of reforms.

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Which outcome is most likely? With four weeks to go in the campaign, the Yes forces have already dissipated a huge early lead and are in clear trouble in at least four provinces. Moreover, the Yes campaign has focused on the negative consequences of a "no" vote, rather than on a defence of the merits of the proposed package. Although these negative arguments will undoubtedly sway some voters, they are unlikely to be decisive. As the campaign heads into the final stretch, perhaps the best hope is that the result on October 26 is sufficiently ambiguous to permit as many as possible to claim victory and as few as necessary to be saddled with defeat.

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