CANADA WATCH

Practical and Authoritative Analysis of Key National Issues

In the Arts We Trust?: Politics and the Funding of Culture

by Jamie Cameron

The Public Trust

While the CBC's mandate has been under public discussion, there has been no dearth of advice to that hallowed institution. Some recommend that the CBC keep radio, but not TV; others oppose commercialized programming, sports broadcasting, or both; and, while some say the CBC should be privatized, still others would like it to be exclusively dedicated to public programming.

The CBC is, after all, a national institution; as such, it holds our culture and identity in trust for all of us. Any decision about its future will feel like a decision about ours. What's more, the CBC is substantially funded by taxpayers' money; as far as we are concerned, that makes it accountable to the public.

Other segments of our culture that hold a share of that public trust also have been in the news recently. A decision by the Writers Union to sponsor an event open only to members of certain races has been nothing short of incendiary. Some say that if the Writers Union wants to have race-based policies and events, it should not be funded by the public.

Now the province of Alberta has announced that funding may be denied to arts productions that "offend the sensibilities and the community standard." That response was pro-

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The "New" National Unity Debate: Itching to Fight the Separatists

by Kenneth McRoberts

It is hard to believe that Canada has been plunged once again into a debate over national unity. After all, the last debate ended in a most ignominious fashion. In voting against the Charlottetown Accord, many citizens, at least in English Canada, seemed to be not only rejecting the Accord, but protesting the very fact that the nation's leaders had invested so much time and energy into devising it.

Nonetheless, less than two years

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Regular Features

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voked by *The Tit Show*, a lesbian production that, presumably, fixes some or all of its attention on "tits."

Should government be funding culture and the arts? If so, how should decisions about funding be made? In particular, do those who receive funding represent us and therefore become accountable for their work?

The Politics of Government Funding

It is not surprising that these issues have begun to command our attention. Almost daily, we are warned that soaring costs and the hoary spectre of a two-tiered system place universal health care in jeopardy. Anxiety about chronic budget deficits and the apparent intractability of the public debt remains high.

In such circumstances, we need to know whether we can still afford culture; has it become a luxury that has slipped out of our reach, at least for the time being? Some might argue that worthwhile projects and organizations will survive in any event, through support from sales, gate receipts, and charitable donations. From that perspective, public funding is only needed at the margins, by those whose work cannot cross that threshold of survival.

It is sometimes said that artists should neither need nor want public funding; there is a sense that it may corrupt art and artist alike. As John Updike put it, "I would rather have as my patron a host of anonymous citizens digging into their own pockets for the price of a book" than "enlightened men [*sic*] administering public funds."

Last, but not least, it is no secret that public funding has at times supported projects that are perceived as obscure, arcane, and even objectionable. A case in point is Karen Finley, an American "post-Modern" performance artist. She, Robert Mapplethorpe, and two others [the "NEA four"] became causes célèbre in the battle over NEA [National Endowment for the Arts] funding. There is no question that her nude, chocolate-smearing act, performed live at a theatre funded by the NEA, was shocking and provocative. The question was whether she and others should be excluded from funding for work that challenged and engaged community values.

One Canadian commentator recently proclaimed that "art is politics." On that view those who seek government support should play the game and tailor their proposals to the prevailing political winds. Any who are unwilling would be left to their own resources.

But wait a minute. As taxpayers, we provide a heavy subsidy to politics, in the form of funding for political parties and their electoral candidates. Without strings being attached, those funds can be spent on offensive advertisements, or to promote views the public finds objectionable.

Few would dispute that art, in many cases, likewise *is* politics. Through the ages, it has been a source of caustic social commentary and has catalyzed us to rethink conventions we take for granted. Can it be a bad thing that art, whether at the CBC studio or in *The Tit Show*, confronts the status quo?

At least one political party discovered last fall that it would be held accountable, if only in small part, for an ad that was so inappropriate it had to be pulled. If art is in some measure politics, what then of *its* accountability?

The Public's Trust

It is widely perceived in Canada that those who receive funding do so in trust for the public, and that implies a relationship of accountability. Perhaps it is time to see that trust in a different light. What of the public's trust in the vitality of our culture and identity, and its faith in our capacity to experiment and grow, in part, through government funding?

Past successes include CBC Radio and the cultivation of Inuit art. In the case of Inuit art, it is questionable whether and in what form it would have emerged without the Canadian Eskimo Art Committee and the extraordinary cooperation among the Inuit, non-aboriginal "southerners," and government sponsorship that began in the early 1960s.

Should we renew our commitment to culture, we can look forward to further successes in the future. Though failure in some instances is inevitable, it should be seen as the price we must pay for the successes we rightly and proudly claim as our own.

It should also be remembered that what counts as success or failure in this context is largely a matter of perception. In many cases, projects and performances are labelled failures because they bare our souls and test our vision of the future. And that is exactly why they should not be barred by censorial standards of sponsorship.

Precisely because culture and the arts are at times overtly political, governments should keep their hands off decisions about the funding of particular projects. When support is tied to "the community standard," government approval defines our creativity. As history has shown, a monolithic vision of culture silences alternative voices and institutionalizes conformity.

Jamie Cameron is Director of York University's Centre for Public Law and Public Policy and is an Associate Professor at Osgoode Hall Law School, York University.

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since that event, the Quebec question is once again at the forefront as English-Canadian politicians, such as Premiers Roy Romanow, Ralph Klein, and Michael Harcourt, feel compelled to denounce the plans of Quebec separatists. The conditions hardly seem propitious for English-Canadian leaders to launch a new attack on Quebec separatism.

Jumping the Gun on the Referendum

First, the pretext for a renewed attack on Quebec separatism, the upcoming Quebec election, seems a bit odd. Apparently, English-Canadian leaders are hoping to dissuade Québécois from voting for the Parti Québécois. Politicians rarely seek to influence an election in another province. There is every reason to believe that if they should do so, such "outsiders" would meet with stiff resistance. Yet, the argument goes, this provincial election is different: with the PQ in the running, the very survival of the country is at stake. Nonetheless, there is ample reason to believe that Quebec voters would be especially likely to resent "outside" involvement.

Second, even though the PQ is committed to sovereignty, the immediate stake is selecting a government party, not deciding the sovereignty question. Jacques Parizeau and other PQ leaders have regularly insisted that the declaration of Quebec sovereignty would only come after a majority vote in a referendum; the PQ program stipulates this. For that matter, it is difficult to see how any declaration of sovereignty would be taken seriously by other states if it were not based upon a popular referendum. Nonetheless, English-Canadian politicians (and some Quebec federalists) have insisted that such a referendum would be a mere formality, in effect predetermined by the election of a PQ government. This amounts to contending that the PQ cannot be trusted to stage a proper referendum, a charge that doesn't seem to wash in Quebec if only because of the experience of the Lévesque government which felt clearly bound by the failure of its 1980 referendum. Alternatively, since opinion surveys continue to show that the majority of Québécois squarely oppose sovereignty, leaders in this new anti-separatist crusade are implying that Quebec voters can be easily duped or tricked into voting "Yes" in a referendum. Either way, the message is not likely to be well received in Quebec. Québécois are bound to be not only perplexed, but offended by the debate currently raging in English Canada as to whether and on what terms Quebec can become sovereign.

Third, it is striking that so far the federalist torch is being carried not by federal leaders, but by provincial premiers, and western Canadian premiers at that. So far, Ontario's Bob Rae seems to have been sufficiently burned by the Charlottetown debacle to avoid wading again into the national unity question. For his part, Prime Minister Chrétien has been loathe to join the battle, although he cannot avoid being drawn in by the need to explicate or defend declarations of his ministers. He may have decided to bide his time, in part, for the kinds of tactical concerns that we have just outlined. (Of course, it may well be that Chrétien has no other approach to the sovereignty question than to dismiss it as hypothetical and unworthy of serious discussion and comment.)

Emphasizing the Negative

Finally, it is amply clear that this time around the response to Quebec separatism can only be a negative one. After the twin debacles of Meech and Charlottetown, separatism can no longer be countered with the promise of a "renewed" federalism. All that is left, it seems, is to focus on the presumed costs of

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Publisher
D. Paul Emond

Editors-in-Chief
Jamie Cameron, York Univ.
Kenneth McRoberts, York Univ.

Senior Editor
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Production
WordsWorth Communications

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separation. Yet, this can only produce an exceedingly sterile debate. Federalists can insist quite correctly that separatist leaders have an interest in minimizing the difficulties of Quebec's transition, and thus, that their statements should not be taken at face value. But they cannot deny that they have an interest in *exaggerating* the difficulties; their statements cannot be taken at face value either. The fact of the matter is that no one can be absolutely certain what the transition to sovereignty would be like for Quebec or for English Canada — although prophecies can be self-fulfilling, especially negative ones.

In recent days, English-Canadian leaders seem to have been engaged in a game of one-upmanship seeking to outdo each other with the most apocalyptic vision. Nonetheless, Michael Harcourt probably earned extra marks with his contention that under separation Quebec and English Canada would become not just antagonists but the "worst of enemies." What could that mean? Would they become like Bosnia and Serbia? Why would that necessarily be the case? How can he, or anyone else, be certain as to what would happen?

We should not be surprised if Québécois either dismiss such statements as lacking face value or, even worse, take them seriously and are insulted as a consequence. In effect, these statements could have precisely the opposite effect of the one intended: increasing the probability of a PQ victory in the upcoming election. Beyond that, they could come back to haunt their authors. If the federalist leaders should keep insisting that the election is really a referendum on sovereignty and the PQ is successful, for whatever reasons, how can they then dispute the pretension of a PQ government that the Quebec population has in fact a mandate for sovereignty?

Why in light of all this is there such a sudden urge on the part of English-Canadian leaders to come out swinging against Quebec separatism? In part, the explanation may lie with Lucien Bouchard's western Canadian tour, ostensibly designed to prepare English-Canadian minds for Quebec's accession to sovereignty. Clearly, his pronouncements about the feasibility, and even inevitability of Quebec sovereignty, have unsettled and enraged a good many English Canadians; the fact that they came from the ostensible leader of the official opposition certainly has not helped. In effect, in launching their crusade against Quebec independence these leaders may be as concerned with scoring points among their own constituents as with changing the minds of Québécois.

Yet Another Missed Opportunity

Yet, in focusing so ferociously on Quebec separation and its presumed consequences, these erstwhile defenders of Canadian federalism have served to further entrench the notion that the only way Quebec and English Canada can bring their continuing conflict to an end is through sovereignty. Once again, an opportunity has been missed to address directly and openly the respective needs and demands of the different parts of the country and to see whether there might be a new approach to "national unity" than the one that has so lamentably failed. After all, survey after survey has demonstrated that the majority of Québécois want Quebec to remain within the Canadian federal system and the majority of English Canadians want it to do so. Yet, their leaders have been singularly unable to devise measures through which this popular desire might be respected.

The last federal election had in fact created the conditions for such a serious rethinking of Canada. The old assumptions about national unity that had been shared by all three established federal parties were thoroughly discredited through the success both of the Bloc Québécois and the Reform party.

Yet, within the new Parliament, the Bloc and Reform have been unwilling and unable to recognize and act upon their commonalities, as spokesmen for different regions that might have gone about devising new political formulas that would respond directly to the concerns of their respective parts of the country. Instead, the Bloc has remained firm in its commitment to the disengagement of Quebec, through sovereignty, and Reform ferocious in its rejection of even the slightest recognition of Quebec's specificity. As for the Liberals, instead of being spurred by their relative weakness in Quebec to develop new approaches to national unity they have become even more intransigent in their adherence to the old approach.

In short, rather than launching a "new" national unity debate that might actually produce new approaches to keeping the country together, Canada's saviours are only too anxious to bring back the old one — but in its shrillest of forms. Quebec will be told that it must remain within Canada because, to put it as brutally as possible, Quebec simply has no other choice. Is this really the best argument that can be made for Canada? Doesn't Canada, and Canadians, deserve better?

Kenneth McRoberts is Director of the Robarts Centre for Canadian Studies and Professor of Political Science at York University.

Parizeau's Legal Arguments Backfire

by Patrick J. Monahan

In the past few weeks, Jacques Parizeau has been trying to shift the debate over Quebec sovereignty into the legal arena.

First, he attempted to defuse the debate over the borders of a sovereign Quebec by invoking the authority of international law. Federal Indian affairs minister Ron Irwin had claimed that, in the event Quebec were to try to secede, aboriginals living in northern Quebec would have a right to remain in Canada. Parizeau responded by citing an opinion obtained by the Quebec National Assembly in 1992 from five international law experts. According to Parizeau, the legal opinion clearly stated that, under international law, the borders of an independent Quebec would be identical to Quebec's existing borders.

Parizeau also invoked the authority of the Canadian constitution in support of his claim that Quebec's borders would remain intact following a unilateral declaration of sovereignty by the Quebec National Assembly. Parizeau pointed to section 3 of the *Constitution Act, 1871*, which provides that no province can have its borders altered without that province's consent. He invited Prime Minister Chrétien to "read the constitution and abide by it."

International Law Can't Defuse Native Issue

There is a very basic reason why Parizeau cannot rely upon international law to negate any claims for self-determination on the part of aboriginal peoples. The reason is that, under international law, any claims of the province of Quebec to self-determination cannot rank ahead of any similar claims from the aboriginal peoples.

There is thus a symmetry between, on the one hand, the claims of Quebec against Canada and, on the other, the claims of the aboriginal peoples against Quebec. To the extent that Parizeau seeks to deny or negate the claims of the aboriginals against Canada, he must similarly deny or negate Quebec's own claims as against Canada. Alternatively, to the extent that Parizeau claims for Quebec a right to unilaterally secede from Canada, he must similarly accord and recognize a claim on the part of aboriginal peoples to secede from Quebec.

This symmetry is illustrated by the 1992 opinion from the five international law experts upon which Parizeau placed such weight. It is true that the opinion from the jurists concluded that, on the assumption that Quebec had already attained sovereignty from Canada, aboriginal peoples would not have any right to interfere with Quebec's territorial integrity. But the legal opinion concluded that Quebec was in precisely the same situation vis-à-vis Canada. The jurists reasoned that, under international law principles, only 'colonial peoples' have a right to self-determination. Because *neither* Quebec nor the aboriginal peoples met this requirement, Quebec did not have a right to secede from Canada and the aboriginal peoples did not have a right to secede from Quebec.

What about approaching the issue from the other end — from the assumption that Quebec does, in fact, possess a right to secede from Canada under international law principles? This was the approach taken by Professor Daniel Turp of the Université de Montreal in a 1992 study prepared for the C.D. Howe Institute. Turp concluded (contrary to the opinion of the five international law experts preferred by Jacques Parizeau) that Quebec does possess a right to self-determination under international law. But this conclusion led Turp inexorably to the view that aboriginal peoples in Quebec also have the right under international law to dispose of their territory as they saw fit. "By virtue of their right to self-determination," Turp concluded, "the native nations of Quebec could decide to attain sovereignty, to remain integrated with Canada, to stay with Quebec if it chooses to become sovereign, or to remain within Canada even if Quebec chooses sovereignty."

So much for international law resolving the borders issue in Mr. Parizeau's favour.

Unanimous Consent Required Under Canadian Law

What about the Canadian constitution, which Mr. Parizeau also invoked in order to rebut suggestions that the borders of an independent Quebec would be inviolable?

It is true that the provinces of Canada have their borders protected by the *Constitution Act, 1871*. But this is only part of the story. The constitution of Canada does not permit a province to unilaterally secede from the federation. Provincial secession would require a constitutional amendment, and would thus be governed by the amending formula set out in part V of the *Constitution Act, 1982*.

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Section 41 of the amending formula describes those constitutional amendments that require the unanimous consent of the provincial legislatures and the Parliament of Canada. Included in this list are constitutional amendments in relation to "the office of the Lieutenant Governor of a province."

Provincial secession would seem to fall clearly within this category. It would eliminate entirely the office of the lieutenant governor of the province of Quebec, since Quebec would no longer be subject to the authority of the British Crown. Therefore, the Canadian constitution would permit the secession of Quebec only with the consent of all the other provinces as well as the Senate and House of Commons. Each legislature and the two federal houses would have to pass identical resolutions approving the terms of secession.

Parizeau Caught in Quicksand on Borders Issue

It's easy to understand Parizeau's motivation in attempting to invoke legal arguments in support of his claims about the borders of an independent Quebec. Parizeau needs to convince Quebeckers that separation will be accomplished cleanly and painlessly. He also wants to create the impression that separation is inevitable. Who wants to be left off the bandwagon of history?

Yet all that his questionable references to legal authority have accomplished is to reveal just how complicated the issue of Quebec's borders would prove in the event that Quebec attempted to secede from Canada. The more Parizeau talks about the issue, the more unresolved it appears. And, despite the protestations from Quebec media commentators that this kind of discussion helps the sovereignty cause, one suspects that the Quebec people will draw rather a different conclusion from this unfolding controversy.

Patrick J. Monahan is an Associate Professor at Osgoode Hall Law School, York University. National Affairs Report is a regular feature of Canada Watch.

QUEBEC REPORT

The Worst of Enemies

by Alain Noël

Impossible Task

Among political scientists interested in public opinion, the dominant impression is that the Parti Québécois will win the next election, but lose its referendum on sovereignty. Given current public opinion, the task at hand for sovereigntists seems almost impossible. They still have a chance; however, public opinion remains mobile and with the right conditions a winning majority could emerge at the decisive moment. Indeed, if what happened the week Lucien Bouchard went to Paris indicates what is to come should the Parti Québécois form a government, anything appears possible.

Reduced to the essential, the facts about Quebec public opinion are quite simple. Although a large number of voters remain undecided, the Parti Québécois leads the Liberals in public support and appears likely to take power in a fall election. The May budget presented by Finance Minister André Bourbeau did not reverse this trend. On the contrary, support for the Parti Québécois increased after it was presented. At the same time, support for sovereignty remains relatively stable, below the 50 percent threshold. If we assume that the Parti Québécois will win the next election, the key objective for sovereigntists will be to move public opinion on sovereignty.

Clusters of Voters

Experience teaches us that, however difficult, such an objective is

not beyond reach. Before the failure of the Meech Lake Accord in June 1990, support for Quebec sovereignty began to climb, to peak above 60 percent in the fall of the same year. This shift in public opinion started before the formal rejection of the Accord and probably had as much to do with the debate as with its outcome. In the months that followed, new support for sovereignty diminished. At least at one point in time, a strong majority of Quebeckers were sovereigntists.

What governs such movements in public opinion? What could bring the temporary sovereigntists of 1990 back to sovereignty, or keep them away from it? It is important to "state the facts," argued a *Globe and Mail* editorial recently, because "the battle of Quebec has already begun." These are not "times for pulling punches," concluded the same editorial, and Michael Harcourt and Roy Romanow were right to denounce separatists.

While it may sound sensible, this type of reasoning assumes a negotiation is about to begin between two calculating actors pondering the respective advantages of their different options. In fact, public opinion on sovereignty has little to do with such a clear-minded, purposeful process. First, a good proportion of the Quebec electorate has already decided, one way or the other, and is unlikely to be swayed by last minute arguments, promises, or threats. Second, the voters that became sovereigntists in 1990, and that could make a difference in 1995, are precisely the least consistent, least informed voters. These individuals tend to be less interested in politics, less anchored in clear positions, and, probably, less likely to make the type of calculation assumed by *Globe and Mail* editorialists.

In a presentation at the May 1994 meeting of the Quebec Political Science Association, Jean H. Guay, professor at the Université de Sherbrooke, summarized the results of a new analysis that confirms a clear distinction between what could be called coherent and undecided voters. There are, in fact, three clusters of voters in Quebec. First, the sovereigntists, who identify themselves as Quebeckers, support the PQ and the Bloc Québécois, and voted "No" in 1992. Second, the federalists, who see themselves primarily as Canadians, support the Liberals in Quebec and Ottawa, and voted "Yes" in 1992. Third, the undecided, who tend to identify themselves as French-Canadians, have fewer years of formal education, are less informed, and more easily change their position. This third group of voters, the primary target of political strategists, seems to be moved by two types of considerations: first, a sense of identity as Quebeckers that will be more or less affirmed according to the circumstances, and second, an evaluation of the costs of the two basic options: the status quo and sovereignty.

"A coast-to-coast emotional debate on the place of Quebec in Canada could move one-time sovereigntists back to sovereignty, and create the majority the Parti Québécois needs."

Stating the Facts

Now, what did Harcourt, Romanow, Irwin, and others do when they "stated the facts" about separatism? Consider Harcourt's statement, by far the most revealing. If Quebec separates, predicted the B.C. premier, we will become "the worst of enemies." Such a statement is neither fact nor prediction; it establishes what amounts to a highly conditional "friendship," and can only reinforce Quebeckers' sense of identity. The slogans Jacques Parizeau is considering for a referendum are not factual either. Like the "worst of enemies" statement, they deal with identity and emotions and, in so doing, open up possibilities for sovereigntists.

For all sides, the complex interplay of emotions and cost evaluations that could influence the decisions of the less committed voters appears tricky. A threat meant to raise concerns about costs may end up triggering an emotional reaction anchored in identity. An affirmation of identity could just as well increase the awareness of the costs associated with change. What is certain, however, is that only sovereigntists need a movement in public opinion. In the light of current polling, it is unclear why politicians outside Quebec would want to stir up controversy, except to influence the provincial election.

If the emotional fuss that accompanies every step Lucien Bouchard takes out of Quebec or Ottawa is an indication of what is to come following the probable election of a PQ government, the chances of sovereigntists are not insignificant. A coast-to-coast emotional debate on the place of Quebec in Canada could move one-time sovereigntists back to sovereignty, and create the majority the Parti Québécois needs. Given the state of public opinion in Canada, such a debate will probably take place. We just do not know how acrimonious it will become.

Alain Noël is Assistant Professor, Département de science politique, Université de Montréal.
Quebec Report is a regular feature of Canada Watch.

WESTERN REPORT

The Emerging National Unity Debate in Western Canada

by Roger Gibbins

At the end of May, Prime Minister Chrétien visited western Canada and, in an oft-repeated refrain, urged audiences to keep their cool on national unity. In a plaintive tone, he said that "if everyone were to shut up on [the constitution], I would be very happy." If silence is a necessary condition for the prime minister's happiness, the odds of a happy summer are increasingly remote.

More important, I would suggest that Prime Minister Chrétien's comments do not capture the dynamics of a new and rapidly emerging national unity debate. Admittedly, western Canadians are not talking about the constitution itself or about past favourites such as the Triple E Senate. However, they are talking about the future of Canada, and they are doing so in very different ways than in the past.

The Impact of Lucien Bouchard

The start of the new debate came with Lucien Bouchard's recent visit to western Canada. Mr. Bouchard's dispassionate discussion of the dismemberment of Canada was designed to goad western Canadians into reacting in a way that would serve the nationalists' cause in Quebec. Westerners were set up as straight men for the nationalists. If they failed to respond, they would be portrayed as accepting his line that Canada's fate was sealed. If they reacted with anger, then they would be portrayed as "hating Quebec" and "revealing their true colours."

Given this unpalatable choice, western Canadians reacted appropriately, and with anger. What was perhaps more surprising than this choice was that the reaction came first from the western premiers. One might have thought that Preston Manning and Reform would fire the opening shots, but to this point they have been outflanked by the unexpectedly aggressive posture of the premiers. However, one should not expect Manning to be on the sidelines for long. After all, the new national unity game — mobilizing English Canada against the threat of the nationalist movement in Quebec — is the game that Manning was destined to play.

"[Canadians] are tired of the constitution, to be sure, but they are also tired of the unrelenting threat to Canada's survival."

The early interjections by the Premiers and, indeed, by the federal minister of Indian affairs, were surprising in another way. In the past, elected politicians outside Quebec have seldom articulated post-Quebec scenarios. It was always assumed, at least publicly, that Canada would stay united; the only question was how that goal might be achieved. Now, however, elected politicians are openly speculating about what the country might look like in the event of Quebec's departure. Post-separation scenarios are no longer the exclusive domain of Quebec nationalists.

The New Terms of Debate

The new national unity debate will not be a very nuanced debate, in part because it will not be anchored by the more esoteric details of Senate reform and the division of powers. Rather, it will be a simpler, more basic debate about the survival of Canada. Thus, we can also expect a more abrasive, emotional, and uncompromising debate than than the one that surrounded the Meech Lake or Charlottetown Accords.

The past debate was dominated by detail, and it is not surprising that the public was not gripped by often pedantic discussions of spending power or the number of elected Senators who could stand on the head of a hypothetical pin. It is probably this form of debate that the prime minister has in mind when he says that Canadians are tired of the constitution. However, a more bare-knuckled debate about the survival of Canada is something else again. Canadians may not want such a debate, but there is no reason to expect that they will back away when it breaks out.

We can also expect a more impatient debate. There is no question that western Canadians are frustrated with the unrelenting pressure of the nationalist movement in Quebec. Hence, the uppermost question is no longer what it will take to keep Quebec in and the country together. Rather, the question is much simpler: is Quebec in or out of the confederation as it now stands?

Coupled with this frustration is a growing resistance to the call to soft-pedal western concerns and discontent for fear that their expression might play into the hands of the nationalist cause in Quebec. While editorial writers are urging people to hold their emotions in check until the Quebec provincial election, there

is little evidence that restraint will be the order of the day.

Nor will the new debate be one in which constitutional experts, including the ready corps of academic advisers, will play much of a role. Those whose skills are devoted to incremental institutional modification or the fine points of constitutional law will be in little demand in a debate that will be much fundamental, and more essentially political, in character.

I would suggest, therefore, that the prime minister is only partially right when he states that Canadians are tired of the constitutional debate. They are tired of the constitution, to be sure, but they are also tired of the unrelenting threat to Canada's survival. To expect that they will stay out of a debate on the latter issue in order to make Chrétien happy is to expect too much. Like it or not, the national unity debate has begun again. However, it will be a very different debate this time around.

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

ECONOMIC REPORT

REPLACING THE GST

by Fred Lazar

THE POLITICAL DILEMMAS FACING THE FINANCE COMMITTEE

In June, the House of Commons Finance Committee, chaired by Jim Peterson, will table its report outlining recommendations for replacing the GST (goods and services tax). The committee has held hearings across the country and has been offered much advice. Many have argued that there is no need to replace the GST since the transition costs have already been absorbed by the economy and any alternative will create new costs. Moreover, these same people have suggested that there is no alternative that would be easier to administer and simpler to operate.

Of course, the GST itself could be improved (simplifying reporting requirements, harmonization with provincial sales tax regimes). But there is no consensus that preserving the GST in some modified form is the preferred route and, indeed, if the Liberals are to abide by their Red Book, then this option is a non-starter for the committee.

In other words, even if the GST is the best alternative for the GST, the Liberal government is committed to finding another alternative. In addition to being guided by the Red Book promise, the committee has found a significant level of agreement that any new tax should be harmonized with provincial tax systems and should be hidden. Obviously, the Committee faces a very difficult task and regardless of what it proposes, there will be many critics and undoubtedly many flaws as well. Despite the continuing resentment to the GST, no one will be pleased with a new tax, and since inevitably there will be many individuals who will pay a disproportionate share of the new tax, relative to the burden under the GST, there will be many complaints. Furthermore, can the Committee and the government afford to entertain an alternative that may impose a heavier burden on taxpayers in Quebec at this critical juncture in our history?

Consequently, will the government eventually decide that the easiest route to follow is to keep the GST and declare that it has fulfilled its election promise by proposing to modify, simplify, and harmonize the GST?

THE GST OPTION

In deciding whether the GST should be retained, the committee and the government should consider the original rationale for this tax. The federal sales tax (FST), which was a hidden tax, had a narrow base and placed Canadian exporters at a competitive disadvantage. Both flaws could have been corrected. Instead, Michael Wilson, the finance minister of the day, and his bureaucrats, set out to find a new tax.

At that time, economists were arguing that tax reform should provide incentives for work, savings, and investment. A consumption tax would achieve these goals since it would not be a tax on income, savings, or investment by business. Moreover, Canadian exporters would be exempt from the tax and so one of the problems with the FST would be corrected.

However, a consumption tax can

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take many different forms. The existing personal income tax system with the increasing limits for RRSPs was moving more in this direction. But the Department of Finance bureaucrats were not willing to experiment with a consumption tax system that was not in place elsewhere among the G-7 or other OECD countries. So they opted for the GST version of a value-added tax.

Currently, the GST generates approximately $70 billion in gross revenues. After all the rebates, exemptions, and credits are paid, the federal government nets around $15 billion (this excludes the taxes paid by the federal government, its many agencies, and Crown corporations). Annual administrative and compliance costs probably range between $500 million and $1 billion. And although the paper trail created by the GST was supposed to reduce the size of the underground economy, lax enforcement through audits have persuaded an increasing number of Canadians that the risks they face in avoiding taxes (income as well as GST and provincial sales taxes) are minimal. While it is unlikely that the debate over the GST's impact on the underground economy will ever be resolved, it is clear that GST has not diminished the volume of underground economy activity.

The GST was a very complex and apparently inefficient replacement for the FST when one considers that the FST's shortcomings were not insurmountable. Although the GST did create a level playing field for exporters, it created a disadvantage for Canadian companies competing against imports, particularly of services. Consumption of services by Canadians vacationing abroad, and the purchase and importation of foreign goods by Canadians also have tended to escape GST taxation. And no evidence has yet been presented that the GST has encouraged work, savings, and investment. Of course, the GST was introduced just before the 1990-91 recession and because of John Crow's fixation with inflation, the GST played a role in exacerbating the recession.

Therefore, is the argument that "the devil you know is better than the one you do not know" sufficiently convincing to justify retaining the GST? I would favour looking for a new "devil" and getting rid of the GST altogether. Its design is flawed; its implementation was ill-timed; its enforcement has been lax; its economic costs have become exorbitant; and its political popularity has been non-existent.

"This package approach should offer several advantages, political and financial, for the government."

Alternatives

In searching for an alternative, the committee should keep in mind that it is dealing with a consumption tax; that is, a tax that does not create disincentives for work, savings, and investment. As well, simplification and efficiency in compliance, administration, and enforcement should be paramount in the selection and design of a replacement for the GST. Finally, there is no economic, financial, administrative, or political reason to look for a single tax to replace the GST. There are good reasons for recommending a package of alternatives.

For example, the following package could be quite attractive and should be able to meet the criteria discussed above:

- *A federal retail sales tax integrated with provincial retail sales taxes.* Although it would be preferable to have a uniform tax base across the country, at first it may be more convenient for the federal government to adopt the tax bases in each province. As a result, there would be little additional paperwork, and with no rebates, the federal tax rate could probably be set at around 3 percent in order to generate between 25 and 30 percent of the GST net revenues.
- *A pure consumption tax built on the income tax system.* The most complex issue would involve defining savings. A perfect definition is not necessary since the tax rate would be set quite low and would vary according to the definition of savings. As a result, there should be little new paperwork for tax filers. Consumer purchases abroad would be taxed automatically, while tourists in Canada would not be subject to this tax. The tax rate also could be made progressive, starting at a rate of about 2 percent, rising to a rate of 5 percent. This tax could generate another 25 to 30 percent of the net revenues of the GST.
- *A carbon tax.* The tax would be imposed on direct users of coal, natural gas, and crude oil, and since the tax would be imposed on both imported sources and domestic sources of these carbon-based fuels, the tax should ultimately be borne by consumers and not the producers. So it should not fall disproportionately on western Canada. The tax would reinforce Canada's commitment to stabilizing carbon dioxide emissions, and it could be structured to minimize any adverse competitive effects on Canadian industries. The tax rate should be selected so as to replace no more than 20 percent of the GST revenues.

- *Expenditure cuts equivalent to approximately 25 percent of the GST revenues.* The $4 billion in spending cuts should placate irate taxpayers and make the package more defensible.

This package approach should offer several advantages, political and financial, for the government. For example, it would be very difficult for people to avoid all of the tax measures and the low rates for each individual tax should lessen the incentives to avoid any particular tax.

By diversifying the tax base, tax revenues may become less sensitive to cyclical and other shocks; hence, government revenues may become more stable, and thus predictable. The government will have the ability to change the relative importance of each measure as more information on the impacts of each measure becomes available, and as economic, financial, and competitive conditions change. The federal government should be able to escape from the either/or straightjacket it finds itself in with the GST.

Finally, by making expenditure cuts as an integral component of the reform package, the government will become more sensitive to the need to control aggregate spending, and thus, be less inclined to periodically increase the various tax rates to achieve budgetary goals. And, of course, there should be a favourable public reaction. This will be important because none of these tax proposals is without problems. No tax is perfect in design and each measure will affect different special interest constituencies.

Fred Lazar is an Associate Professor of Economics, Faculty of Administrative Studies and Faculty of Arts, York University. Economic Report is a regular feature of Canada Watch.

LEGAL REPORT

Redefining Family: Ontario Proposes Spousal Status for Gay and Lesbian Couples

by Bruce Ryder

Over the past two decades, many gay and lesbian couples have engaged in a concerted effort to achieve legal recognition of their relationships. Denied the powers, rights, and benefits that accrue to "spouses," and spurred by the promise of equality provided by human rights legislation and section 15 of the Charter, they have sought redress before courts and human rights tribunals with increasing success. Our elected representatives, however, have demonstrated a strong preference for avoiding any discussion of their constitutional obligations in this area. Legislation in all Canadian jurisdictions still defines "spouse" uniformly in heterosexually exclusive terms.

Ontario's Bill 167

The long-delayed introduction of Bill 167, the *Equality Rights Statute Law Amendment Act, 1994*, by the Ontario government thus amounts to a significant milestone. The Bill accords same-sex couples precisely the same legal status in Ontario legislation as is currently possessed by "common law," or unmarried, heterosexual couples. The Bill would accomplish this result by expanding the definition of spouse (or related terms, such as "next of kin") in more than 70 Ontario statutes to include "a person of either sex with whom the person is living in a conjugal relationship outside marriage."

Among other things, the Bill would have the effect of imposing spousal support obligations on gay and lesbian partners, removing the barrier to the consideration of adoption applications by gay and lesbian couples, and requiring employers who provide family employment benefits to unmarried heterosexual couples to extend those benefits on the same terms to gay and lesbian couples.

On May 19, Bill 167 passed a rare recorded vote on first reading in the Ontario legislature by the slim margin of 57 to 52 (21 members were absent). Even though the Bill was presented as necessary to bring Ontario statutes into compliance with section 15 of the Charter, the government found it necessary to allow a free vote on the Bill, thus sending out the distressing signal that whether or not to comply with constitutional obligations is a matter of individual conscience. As a result, the Bill will face a closely divided legislature at each stage of the legislative process. It appears unlikely that the Bill will pass into law in its present form.

The Paths to Spousal Equality

Bill 167 does not attempt to guarantee complete legal equality to gay and lesbian couples. Under existing legislation, heterosexual couples can become spouses in one of two ways: by marrying or by living together in a conjugal relationship outside of marriage for a defined period of time. Married people are "first-class" spouses in the sense that they have a fuller package of legislative rights that are effective whether or not

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they are living together or have lived together for a defined period of time. "Second-class" spouses, or common law couples, are denied certain rights that married spouses have in all provincial jurisdictions — rights, for example, to an equal share of family property on the breakdown of a relationship and to intestate succession on the death of a spouse.

Bill 167 adds gay and lesbian couples to the second category of spouse without making any changes to the package of rights that accompany married or common law spousal status, respectively. Because the right to marry is denied to gay and lesbian couples, "first-class" spousal status remains closed to them.

"The government found it necessary to allow a free vote on the Bill, thus sending out the distressing signal that whether or not to comply with constitutional obligations is a matter of individual conscience."

The jurisdiction to redefine the capacity to marry lies with the federal Parliament. However, a province could put in place an alternative means by which gay and lesbian couples could choose to register as legal spouses. Denmark passed such a "registered partnership" law in 1989, allowing gay and lesbian couples who register their relationships to obtain the legal rights of married couples. A more limited version of a domestic partnership law has been approved by the lower house of the California legislature. Last year, the Ontario Law Reform Commission recommended the adoption of a "registered domestic partnership" scheme in Ontario. The Ontario government declined to follow this recommendation. Bill 167 provides no mechanism, equivalent to marriage, by which gay and lesbian couples could choose to designate themselves immediately as first-class spouses for the purposes of all provincial legislation.

Rock and a Hard Place

Whether or not Bill 167 is enacted, ongoing litigation initiated by gay and lesbian couples and the power of Charter-inspired equality discourse will keep the question of family redefinition on the political agenda. In recent years, the governments of British Columbia, New Brunswick, and Ontario have extended same-sex spousal benefits to their public employees, and the federal government has indicated that it will abide by tribunal decisions ordering it to do the same.

Despite opposition in its own caucus, the federal government has embarked on a review of family definitions in federal laws and Justice Minister Rock has promised legislation before the end of the year. Rock's intriguing proposal that all interdependent domestic relationships be included in legislative definitions of family is broadly inclusive and may have a better chance of success than legislation that focuses on the rights of lesbian and gay couples.

Conclusion

Governments that propose recognition of same-sex spouses face fierce opposition from forces committed to the view that heterosexual family units are threatened by the legal recognition of their lesbian and gay counterparts. Nevertheless, it seems inevitable that the law will continue to catch up with the sociological reality of family diversity. In the end, the logic of constitutional equality is likely to prevail over the view that discrimination is a family value.

The real question is whether steps toward family equality will be initiated by the courts or the legislatures. If Bill 167 fails in the Ontario legislature, one of the unfortunate consequences will be that the burden of law reform will be left with lesbian and gay litigants. Legislatures in other jurisdictions will point to the failure of the Bill as a further reason for adhering to the status quo. Change would then continue to occur in a slow and piecemeal fashion primarily through court challenges to particular laws or policies without the kinds of public debate and accountability this issue so richly deserves.

Bruce Ryder is an Associate Professor at Osgoode Hall Law School, York University.
Legal Report is a regular feature of Canada Watch.

CW UPDATE

The Month in Review

by Michael Rutherford

B.C. Taxes Forest Companies To Create Jobs

The B.C. government introduced legislation on April 15 that would impose $2 billion in new taxes on forest companies to finance a job creation scheme for forest workers who lose their jobs. The plan has received support from industry officials and environmentalists.

Social Reform Meeting Cancelled

The federal government cancelled a federal-provincial meeting on social program reform scheduled for April 18 after Quebec Premier **Daniel Johnson** threatened to boycott the meeting. Johnson is critical of the federal refusal to give Quebec full control over manpower training.

United States Escalates Farm Trade Dispute

The United States notified the General Agreement on Tariffs (GATT) and Trade on April 22 that it would impose new tariffs and a cap on Canadian imports of wheat, barley, and malt in 90 days. The move came after agricultural trade talks between the two countries broke off on April 15. The United States claims that unreasonable subsidies in Canada have resulted in a flood of Canadian wheat into the U.S. market.

McLaughlin Will Resign in 1996

New Democratic Party Leader **Audrey McLaughlin**, announced on April 18 her intention to resign as leader in 1996, before the next election. McLaughlin will continue as leader while the party undertakes a thorough review of its principles and policies.

New Fisheries Adjustment Program

A new five-year, $1.9 billion federal assistance package for 30,000 Atlantic fishery workers was announced on April 19. Under the terms of the program, fishery workers will be required to upgrade their education or participate in community development projects in order to receive assistance.

Dumont Replaces Allaire

Mario Dumont, the 24-year-old former leader of the youth wing of the Liberal party of Quebec, took over the leadership of the Parti action démocratique du Québec from **Jean Allaire**, who resigned on April 28 because of failing health.

N.S. Premier Attacked at Legislature

For the first time in the 150-year history of the Nova Scotia legislature, spectators forced the cancellation of a sitting of the House of Assembly on April 29. Angry construction workers prevented the reading of the budget and then punched and kicked Premier **John Savage** on his way out of the legislature. The workers were protesting against legislation they say would allow non-unionized workers on job sites and lead to lower wages.

McCarthy Resigns as Socred Leader

Grace McCarthy resigned as leader of the B.C. Social Credit party on May 3. Her decision follows her defeat in a March by-election and the defection of half of her Social Credit caucus to the Reform party of British Columbia.

Parole Chairman Resigns

Solicitor General **Herb Gray**, announced on May 6 that the chairman of the National Parole Board, **Michel Dagenais**, would be replaced by the vice-chairwoman of the board, **Nancy Stableforth**. Dagenais offered to resign following allegations that he misled the House of Commons Justice Committee on the role of board member **Ghislain Bellavance** in five controversial parole decisions.

Agreement on Interprovincial Trade Panels

Talks between Canada's trade ministers ended on May 10 with an agreement to establish interprovincial trade dispute settlement panels accessible to provincial governments and private individuals. The panels would be similar to those provided for in the trade agreements with the United States and Mexico.

Cruise Testing Not Needed, United States Says

U.S. Defense Secretary **William Perry**, told the federal government on May 16 that the Pentagon has no need for further tests of the cruise missile in Canada. The announcement came three days after Foreign Affairs Minister **André Ouellet** said that the government would no longer approve any requests for testing.

Newfoundland Teachers Strike

Newfoundland teachers launched a legal strike on May 16 to protest against a government contract offer that included cuts in wages and benefits and the elimination of hundreds of teaching positions. The walkout comes six weeks before the end of the school year.

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Bouchard Seeks Support in Paris

In his capacity as leader of the official opposition, Bloc Québécois leader **Lucien Bouchard** travelled to Paris to meet with French politicians and to elicit support for Quebec sovereignty. Bouchard's week-long trip, beginning May 16, passed almost unnoticed in France, but aroused considerable controversy back in Canada.

Mercredi Pulls out of Native Self-Rule Talks

Ovide Mercredi, National Chief of the Assembly of First Nations, quit a two-day meeting on native self-government held in Quebec City on May 16 and 17. Mercredi pulled out of the multilateral negotiations after the federal and provincial governments rejected his plea to limit the talks to native groups and the federal government.

Irwin Says Quebec Natives Can Stay in Canada

Federal Indian Affairs Minister **Ron Irwin** said on May 17 that Quebec's native peoples have the right to remain part of Canada if Quebec should separate. Irwin said that the federal government had a responsibility under treaty provisions to protect native interests. Irwin's statements were strongly criticized by Quebec Premier **Daniel Johnson**, who said that Quebec's territory would always be "indivisible."

Ottawa To Appeal Ruling on Child Support

Justice Minister **Allan Rock** announced on May 18 that the federal government will ask the Supreme Court for an immediate stay of a Federal Court of Appeal ruling that child support payments should no longer be taxed. The case involves a Quebec mother of two, **Suzanne Thibaudeau**, who launched a Charter equality rights challenge to the Income Tax Act in 1989.

British Columbia Penalized for Extra Billing

Federal Health Minister **Diane Marleau**, announced on May 19 that the federal government will penalize British Columbia $1.7 million, the amount extra-billed by a small group of B.C. doctors. The penalty, imposed under the terms of the *Canada Health Act*, will be subtracted from the federal government's monthly $62 million transfer payment to British Columbia for health and education services.

Same-Sex Legislation in Ontario

On May 19, the Ontario NDP government introduced legislation giving same-sex couples the same rights as common law couples. The legislation, which narrowly passed a vote on first reading, would be the first of its kind in Canada.

Mohawks Clear New Ground at Oka

Mohawks at Oka, Quebec, have moved into disputed land in an attempt to expand a sacred burial ground. Several Mohawks moved into the area on May 19 with bulldozers and chain saws to begin clearing the land. The area under dispute, claimed by both the Mohawks and the town of Oka, was at the centre of a summer-long crisis in 1990.

Michael Rutherford is an MA student in Political Science at York University. CW Update is a regular feature of Canada Watch.

SUPREME COURT WATCH

A digest of recent significant decisions of the Supreme Court of Canada

R. v. Jones May 12, 1994

The Supreme Court upheld the admissibility of psychiatric evidence in dangerous offender proceedings where the accused was not informed of the possibility of such use. In a 5 to 4 decision, the court held that there could be no charter violation since the dangerous offender proceedings provide a public interest function, rather than a punitive function. In addition, the court noted that such proceedings are used for sentencing after guilt has been determined and are not a forum for further incrimination.

R. v. Mohan May 5, 1994

In a split decision, the Supreme Court upheld a finding by the Ontario Court of Appeal that a criminal accused could not admit expert psychiatric evidence that would show that he did not belong to a psychological class of individuals likely to be sex offenders. Such evidence, the court concluded, would be admissible only if the psychiatric profile to be used could be shown to be standardized, reliable, and in wide usage.

A.-G. (British Columbia) v. A.-G. (Canada); Re An Act Respecting the Vancouver Island Railway May 5, 1994

The Supreme Court held that there was no constitutional obligation on the part of the federal government to continue to operate passenger rail service between Victoria and Nanaimo on Vancouver Island. It was held that the agreement entered into in 1883 between the governments of Canada and British Columbia was one that guaranteed construction of the railway and could not have amounted to a constitutional amendment. The case was a challenge to the Canadian Transportation Commission's plan to terminate the uneconomic passenger rail service on Vancouver Island.

Téléphone Guevremont Inc v. Québec (Régie des télécommunications) April 26 1994

The Supreme Court unanimously decided that the operations of Téléphone Guevremont were within the jurisdiction of the CRTC and the federal government by virtue of section 92(10)(a) of the constitution. The small, rural telephone company had appealed to the Quebec courts with regard to orders made against the company by the provincial regulating body, Régie des télécommunications du Québec, to which it had previously been responsible.

Galaskie v. O'Donnell April 14, 1994

By a margin of 7 to 2, the Supreme Court overturned a B.C. Court of Appeal decision that concluded there was no duty on the part of a driver to ensure that a passenger under the age of 16 had his seatbelt on. The court held that the presence of a parent would not negate this duty. They decided that, since the driver is in control of the vehicle, he or she should take all reasonable steps to protect the safety of all child passengers.

R. v. Burns April 14, 1994

In a sexual assault case, the Supreme Court ruled that the B.C. Court of Appeal ought not to have ordered a new trial when it found that, on the facts available, the trial court could have reasonably reached its conclusion. The court held that there is no obligation on lower court judges to expressly state in their judgments that they appreciate all aspects of the evidence brought forward in a given case.

R. v. Power April 14, 1994

On an appeal from the Newfoundland Court of Appeal, the Supreme Court held that there is a very high threshold to be met if an abuse of process by the Crown is to be found in criminal proceedings. The Court of Appeal and the trial court found that the admission of breathalyzer evidence would have brought the administration of justice into disrepute because of the Crown's conduct. It was held that bad faith or improper motive on the part of the Crown must be shown in order to claim abuse of process and that courts should not interfere with prosecutorial discretion.

Bill C-8: An Act to amend the Criminal Code and the Coastal Fisheries Protection Act.

This Act clarifies the rules governing the use of force by police officers or anyone lawfully assisting them in the case of a fleeing suspect. The Act would permit the use of as much force as necessary to prevent the escape of dangerous suspects when no other less violent means are available. The Act also provides for the use of force by protection officers who attempt to disable fleeing foreign fishing vessels.

House of Commons	1st reading:	February 4/94
	2nd reading:	February 14/94
	3rd reading:	April 21/94
Senate	1st reading:	April 21/94
	2nd reading:	April 26/94

(Referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

Bill C-18: An Act to suspend the operation of the Electoral Boundaries Readjustment Act.

This Act suspends the operation of the Electoral Boundaries Readjustment Act (which requires federal ridings to be redrawn after each census) for 24 months and dismantles the existing 11 electoral boundaries commissions.

House of Commons	1st reading:	March 18/94
	2nd reading:	March 24/94
	3rd reading:	April 13/94
Senate	1st reading:	April 19/94
	2nd reading:	April 20/94

(Referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

Bill C-22: An Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport.

This Act declares the agreement between developers and the former Conservative government to redevelop Pearson airport not to have come into force and to have no legal effect. The Act prohibits the recovery of forgone profits or lobbying fees and sets a deadline of 30 days after the legislation is passed for proving any claims for "out-of-pocket" expenses.

House of Commons	1st reading:	April 13/94