

GROUP OF 22

# ***Making Canada Work Better***

*The authors of this report, who sign as individuals, believe that the search for a renewed Canada needs an injection of analytical and political energy. This report, presented in a spirit of modesty, contains our best thinking at this time on how Canadians might make the country work better.*

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## PREFACE

This document originated in a post-referendum, pre-Christmas meeting of about 10 individuals who had one frustration in common. At the time, we felt that too many people were focussing too much attention on the negative side of the national unity debate. What should be the terms of a Quebec secession? What would be the political landscape of Canada-without-Quebec? And so on. While recognizing the need for such thinking (some of us are involved in it), we were also concerned that excessive focus on this dimension could lead people to give up on the idea of a united Canada. A single-minded focus on Canada-without-Quebec could become a self-fulfilling prophesy. And we were united in the view that such an outcome would be second- or third-best from the standpoint of large majorities of Canadians from all parts of the country.

Not only that, but we were also convinced that Quebecers were far from alone in their desire to make Canada work. Canadians from all parts of the country are looking for a vision of Canada that will carry them into the next century.

Since that first meeting, our group has expanded\* and circumstances have changed to a degree. Nevertheless, we remain convinced that the search for a renewed Canada needs a major injection of analytical and political energy.

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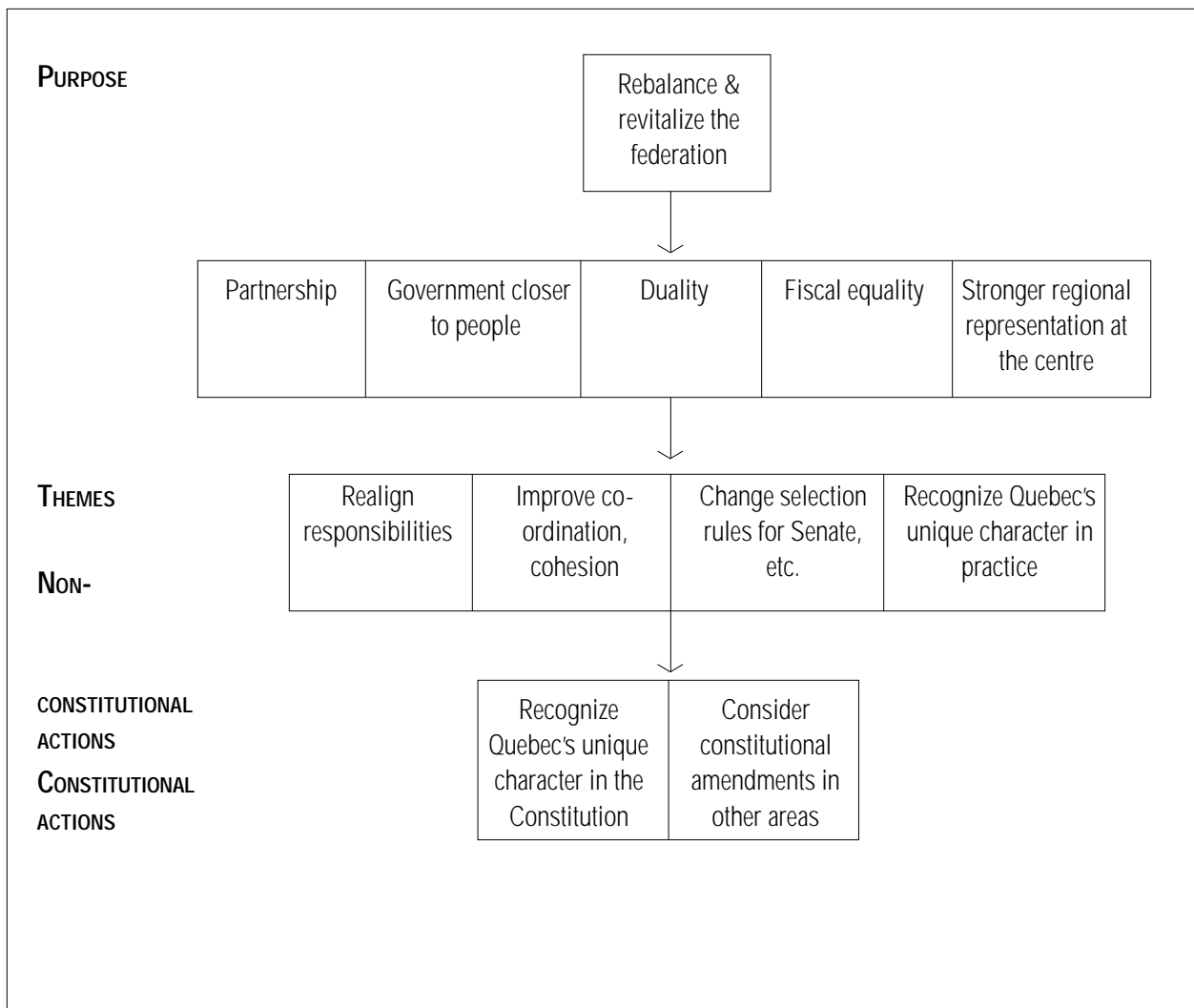
\*By coincidence, our numbers expanded to 22, making us the second "Group of 22." The original "Group of 22" made proposals for the renewal of Canada in the early 1990s.

# SUMMARY

Substantial majorities of Canadians from inside and outside Quebec want to rethink the country and make it work better. We believe that shared values and material successes provide solid building blocks to create a successful vision of our future that will forge commitment and solidarity among Canadians. We seek to contribute to this vision by proposing an action plan that might prove useful to both governments and the thousands of Canadians who are now engaged in rethinking the country. While our plan is presented in a spirit of modesty, it is also quite specific. Better, we thought, to stick our necks out a bit than resort to generalities that would do little to advance the debate.

## SUBSTANCE OF THE PLAN

Our plan may be illustrated as follows:



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The purpose is to **rebalance** and **revitalize** the federation. Rebalancing speaks to realigning powers and enhancing overall cohesion and co-ordination. Revitalizing speaks to citizen commitment by creating a system that speaks to the values, aspirations and self-images of Canadians in all parts of the country.

To achieve this purpose, we think that actions should be governed by five principles, or themes.

- **Partnership** means an end to unilateral behaviour by federal and provincial governments. It means a concerted and co-ordinated effort by all levels of government to preserve and promote our social and economic union and to manage interdependence.
- **Government closer to people**, or “subsidiarity,” imparts a bias to decentralization but it is also consistent with moving responsibilities “upwards” when there is good reason to do so. The principle may also be applied asymmetrically since different provinces are likely to have different tastes, resources and needs.
- **Duality** means that actions should be informed by a recognition and celebration of Canada’s duality. Quebec, as the centre of the French language and culture on a continent that is massively English-speaking, has responsibilities and challenges unlike those of other provinces.
- **Fiscal equality** speaks of fairness to provinces and individuals. Other than through the formal equalization program, federal government spending programs should be governed by the principle of equal treatment of provinces. Federal spending directed to individuals should not depend on province of residence.
- **Stronger regional representation at the centre** means that the federal government should respond to those many Canadians who feel their regions are inadequately represented in central institutions.

Governed by these five principles, we should take non-constitutional action in four areas: reconfiguring responsibilities; improving co-ordination and cohesion; changing the selection process for the Senate, the Supreme Court and the Bank of Canada; and recognizing Quebec's unique character in practice.

Later on, possibly by the end of 1997, we feel that limited changes to the Constitution will also be necessary. In particular, the Constitution must recognize Canada’s fundamental duality, whether this is done through a distinct society clause or through other means.

## PROCESS

Before summarizing our detailed proposals, we describe a possible process.

### Now

- The federal government embraces true partnership with the provinces in which control over the agenda, priorities and process is shared.
- The parties might seek to reduce the likelihood of failure by refraining from formal commitments, or targets, until they are confident the targets will be hit. Proposals on process are subject to this *caveat*.

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- Processes that promote the democratic engagement of citizens and citizen groups should be set up early.
  - Changes in selection procedures for central institutions could be announced early.

### Next six months

- Six months of politically energized administrative activity should result in action and agreements in key areas. That activity would draw on work already under way and on certain key commitments made by the federal government in the Speech from the Throne.
- Depending on the political climate at the time, the partners might launch a formal process three to nine months from now. That process should be intergovernmental, but informed by other sources, and it should make recommendations on a small number of key issues.

### By the end of 1997

- Informally, the parties might aim to sign an administrative Pact on the Social and Economic Union by the end of 1997. A formal commitment could be made when success seemed likely. The Pact would consolidate much of the “energized administrative activity,” with input from citizens and the formal process. As noted earlier, we believe it is both appropriate and necessary to recognize duality in the Constitution — and perhaps to change the Constitution in other ways as well. Ideally, such changes could occur at the same time as the signing of the Pact, i.e., by the end of 1997.

## SPECIFIC RECOMMENDATIONS

Specific recommendations may be summarized as follows:

- The federal government should immediately offer the entire field of **labour market training** to all interested provinces. This offer should be contingent on implementation of the labour mobility provisions of the Agreement on Internal Trade (see below) and it should include an equitable share of the training component of unemployment insurance revenues.
- A good number of **other sectoral agreements** should be negotiated over the next six months. These should be governed by the priorities of the partners and by the principles of subsidiarity, duality and fiscal equality.
- Building on work already done in the *Report to Premiers*, the provinces, in consultation with the federal government, should refine their **social policy goals**, with particular emphasis on the task of providing all Canadians with “**human capital**.” Education, skills, knowledge and training are critical to prosperity in the next century. More than anything else, our collective success or failure in this area will determine Canada’s prosperity in the world economy, as well as our capacity to create the jobs that many Canadians so badly need.

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- Agreement on pan-Canadian social norms and their enforcement should be a matter for all of the partners, rather than the federal government alone. Pending such agreement, the **Canada Health Act** should be preserved.
  - Vehicles should be found to provide better information to the public through the **monitoring** and **benchmarking** of social policies across the country.
  - In order to preserve and promote the **economic union**, provisions of the Agreement on Internal Trade relating, among other aspects, to harmonization, or mutual recognition, of labour and training standards should be implemented. Other areas of co-operation (e.g., co-ordination of fiscal policy) should be explored.
  - With respect to new shared-cost programs, the **federal spending power** in areas of exclusive provincial jurisdiction should be exercised only with the agreement of seven provinces representing 50 per cent of the population. Moreover, provinces should be able to opt out of such programs with fair compensation.
  - Reasonably **stable funding** by the federal government is a *sine qua non* of an effective partnership. The administrative discipline imposed by the renegotiation of equalization payments on a regular five-year cycle should be generalized to other areas. (We acknowledge that the federal government moved in this direction in the last budget.)
  - Subject to mutually agreed upon constraints, the spirit of the agreement should be such as to maximize **flexibility**, **experimentation** and **initiative** on the part of all governments.
  - The prime minister should agree to appoint senators, Supreme Court judges and directors of the Bank of Canada from **lists submitted by provincial governments**. This would permit elections to the Senate in provinces whose governments chose to go that route.
  - In terms of the **constitutional recognition of duality**, informal efforts to find a mutually acceptable formulation should continue. Several possibilities are discussed in this paper.

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## I. INTRODUCTION

Last October 30, Canadians were granted what may be the final opportunity to rethink the country. Most Canadians, both inside and outside Quebec, want this opportunity to be seized. At least that is the message from a mid-March CBC-CROP opinion poll. According to the poll, 75 per cent of respondents outside Quebec and 64 per cent of Quebecers believe that federalism can be improved to the satisfaction of both groups. Majorities in both regions also believe that a new deal will, in fact, be struck. In terms of what Premier Bouchard should do, 60 per cent of Quebecers think he should “seek to negotiate an agreement with the federal government and other provinces with a view to renewing federalism...” while only 28 per cent think he should “work for Quebec sovereignty.” While the poll also revealed substantial differences about the desirable contents of such an agreement, nevertheless, we are encouraged and energized by this evidence that Canadians from inside and outside Quebec want to rethink the country and make it work.

The challenge, we believe, is to come up with a vision of the country and its future that builds commitment and solidarity. Such a vision must respond to the desire for change coming from **all parts of the country**. It must build on shared values, while also respecting differences. As shown by countless polls, Canadians from all parts of the country do share core values. On a matter of fundamental importance to this report, more than 80 per cent of people in both Quebec and the rest of the country agree that Canada is the best country in the world. At the same time, a successful vision must respect differences. If our federation is to survive, this vision must respond to Quebec’s sense of identity, but it will not work unless it also resonates for other Canadians and reflects their identities. Yes, we must “accommodate” the people of Quebec, but it is equally important to “accommodate” other Canadians in a vision of the country that makes room for us all.<sup>1</sup>

The vision must also translate into a practical plan leading to a stronger economy, more viable social programs and more workable governments — and it must do all of this within the constraints imposed by our fiscal situation and by a tougher global economy, one in which knowledge and skills have become the essential ingredients for success. This is a rather daunting challenge, and our plan is presented in a spirit of modesty. It is not a blueprint but, rather, a framework that could prove useful to governments and also to the thousands of Canadians who are engaged in similar exercises of rethinking the country. Moreover, our proposals draw substantially on the work of others, including the recent federal initiatives contained in the budget and the Speech from the Throne.

The key concepts of our plan are **rebalancing** and **revitalizing**. Rebalancing embraces not only reducing duplication and overlap, but also reconfiguring the distribution of powers between Ottawa and the provinces. This will involve decentralization in some areas. Rebalancing also requires strengthening the internal economic union and possibly new functions for the central government. Revitalization speaks to citizen commitment. It requires a partnership approach to agree on pan-Canadian minimum social standards. Revitalization also calls for a celebration of Canadian duality; it calls for both flexibility and initiative on

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<sup>1</sup> This statement, we acknowledge, is something of an exaggeration. We say little here about the role of First Nations. This omission reflects a focus on issues of federalism and certainly not a conviction that a process dealing with aboriginal issues is unimportant. Moreover, it seemed appropriate to await the release of the findings of the Royal Commission on Aboriginal Peoples.

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the part of all governments; and, it requires a stronger role for the regions in our central institutions. And, finally, no process to renew and revitalize the country is likely to work unless it includes the meaningful involvement of individual Canadians.

We have tried to learn from past failures, notably Meech Lake and Charlottetown, as well as from recent success stories, notably Paul Martin's policy of setting fiscal targets sufficiently modest to almost guarantee success. On the first point, we are certainly not proposing a repeat performance of the past several years when Canadians became enmeshed in ultimately unproductive constitutional negotiations. Neither are we proposing omnibus "packages" to be presented on a take-it-or-leave-it basis. Rather, we propose a menu of choices, building on accomplishments to date, leading to non-constitutional agreements and, ultimately, to limited changes to the Constitution. On the second point, because Canada cannot afford another failure at this juncture, we seek to maximize the chances of success. Our menu ranges from bite-sized snacks to a full-course dinner. It is our political leaders, no doubt influenced by public opinion, who will have to decide how much is digestible at any given moment. However, we believe very strongly that if Ottawa could embrace the concept of true partnership with the provinces, then the time may now be ripe for a concerted effort to renew the country.

The organization of the report is as follows. Section II provides an overview of Canada's performance, while Section III enunciates five themes that underpin our proposals. Sections IV and V deal with the process and the substance of our proposals, while Section VI presents a brief conclusion.

## II. CANADA'S PERFORMANCE

A stranger who visited Canada in 1960 and again 30 years later would have been astonished at the changes that had taken place, especially in comparison with the United States, then, as now, the home of the world's highest levels of real income and productivity. In 1961, Canadian gross domestic product (GDP) per capita, the broadest measure of economic performance, was 70 per cent of that in the United States. By 1990, most of the gap had been eliminated, with Canadian per capita incomes at 92 per cent of those in the United States.<sup>2</sup>

Canada's convergence towards U.S. levels of income per capita has not been at the cost of growing disparity among the provinces. In fact, the disparities between rich and poor provinces have been substantially reduced. During the same 30-year period, all of the seven poorer provinces had faster growth rates of GDP per capita than did any of the three richest provinces (Helliwell, 1996). In the case of Quebec, it is noteworthy that economic gains took place in concert with, rather than at the expense of, the strengthening of the French language and culture. Moreover, the income gap between English- and French-speaking Quebecers, which was on the order of 40 per cent at the beginning of the 1960s, had virtually disappeared two decades later

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<sup>2</sup> The statements in this paragraph are based on nominal values of gross domestic product (GDP) converted into a common currency using purchasing power parities from Summers and Heston (1991). This convergence was not unique to Canada, of course; it was general among industrial countries. The degree to which Canada converged to U.S. living standards was greater than in France or the United Kingdom, but much less than in Japan.

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[Boulet and Raynauld (1977), Lacroix and Vaillancourt (1981)].<sup>3</sup> In short, it has not been necessary for Quebec to choose between economic development and improving the role of the French language and the position of francophones since both have happened at the same time and in the context of the Canadian federal system.

Also noteworthy is that Canada's superior economic growth has occurred while our social safety nets have been much broader and more inclusive than those in the United States. It has been estimated by Blank and Hanratty (1993) that if the coverage and benefit rules of the main Canadian social transfer policies (excluding health care for the moment) were applied in the United States, these programs in the United States would cost more than twice as much, and the proportion of the population falling below the poverty level would be cut in half. The higher cash cost of the social transfer policies is offset by the lower cost of health care in Canada, so that the combined cost of the health care and social safety net policies in the two countries is approximately equal, despite the fact that coverage is much more complete in Canada. Thus, Canadian social policies, as measured by the coverage and redistributive effectiveness of the social safety nets, are much stronger than in the United States. Indeed, Canadians so cherish their social arrangements that they have become one of the defining characteristics of our society.

## CHALLENGES OF THE 1990s

While Canadians in 1989 could take pride in their economic and social accomplishments, there is no doubt that performance in the 1990s has been disappointing on a variety of fronts. GDP per capita, which had been gaining on the United States since 1960, has suffered a relative decline of about five percentage points since 1989. Rates of unemployment and poverty have increased, while the federation has been challenged by constitutional failure and a Quebec referendum in which almost one-half the voting population opted for sovereignty. Mainly in the relatively prosperous 1970s and 1980s, our governments, and especially the federal government, built up a massive debt; now, in the much tougher climate of the 1990s, governments have had no choice but to put their fiscal houses in order.

More generally, the march of global events in the 1990s has been weakening some of the unifying forces of Canada's past. Our first national policy — tariffs, transportation and immigration — served admirably in unifying the country. Our second national policy, the creation of the Canadian welfare state and the pursuit of inter-regional equality of opportunity, remains one of the defining features of the Canadian federal system. Now, however, the forces of continental integration under the North American Free Trade Agreement (NAFTA) are strengthening north-south ties in relation to the traditional east-west linkages fostered by the National Policy of 1879. At the same time, social policies are being challenged by domestic debt and deficit problems and by a more competitive global economy.

In our view, however, Canada's major achievements since the early 1960s can and should be a better guide to the future than the problems of recent times. Canada is still one of the richest countries in the world, with a highly skilled labour force, a positive social climate, a low inflation rate, an improving trend in government

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<sup>3</sup> It is clear, however, that part of this closing of the gap must have been due to a decline in the position of English-speaking Quebecers relative to Canadians in other provinces.

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finances, and, as already noted, a common set of values in all parts of the country. Canada is also a remarkably integrated national economy. As shown by McCallum (1995) and Helliwell (1996a), Canadian provinces, including Quebec, still trade more than 15 times as much with each other than with U.S. states of comparable size and distance. These are powerful building blocks on which to remake Canada for the next century. If, in pursuing this rebalancing and revitalization, we also implement policies consistent with the emerging reality that human capital, knowledge and skills are critical to prosperity in the next century, the result may well be akin to a new “national policy” for Canada’s third century.

### III. FIVE THEMES FOR RENEWAL

Although our plan leans towards practical, non-constitutional action, it is also driven by five key themes, or principles. The first two of our themes speak mainly to **rebalancing** and the other three mainly to **revitalization**. We turn now to descriptions of each of these themes.

#### A. PARTNERSHIP

To us, partnership means an end to unilateralism. This includes provincial unilateral behaviour (e.g., the imposition of residency requirements for welfare recipients by British Columbia) as much as federal unilateral behaviour (e.g., arbitrary changes in funding formulas). Nowhere is partnership more important than in the management of the economic and social union. Few Canadians would gain from a weakening of this union, or from the balkanization of the country that could result. To meet the global challenges of today, we need a strong economic union in which Canadians and their skills can move freely across the country in response to new opportunities in other provinces or to difficulties at home. While the provinces and provincial electorates have always been the primary providers and guarantors of social policy, traditionally, Canadians have relied on the federal spending power and federal rules, such as the Canada Health Act, to enforce standards in certain areas. While many believe that this system served Canadians well in the past,<sup>4</sup> it is becoming increasingly difficult to sustain. On the one hand, the erosion of cash transfers is reducing Ottawa’s authority in the social sphere. On the other hand, many provinces, and not just Quebec, are demanding greater flexibility in carrying out their responsibilities within their own jurisdictions.

In our view, the only viable approach today is based on partnership — a non-constitutional federal-provincial agreement, or, to use André Burelle’s expression, a Pact on the Canadian Social and Economic Union. The parties would agree on common goals, the division of responsibilities, stable funding, guidelines for the use of the federal spending power, and processes for managing government interdependence and conflict. All governments would enjoy flexibility and accountability within their areas of jurisdiction but would be subject to mutually agreed constraints. And, in certain areas, Canadian citizens would be guaranteed minimum common standards for social programs, not through a set of federal rules of dubious enforceability and legitimacy, but through an agreement signed by both levels of government.

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<sup>4</sup> Certainly, Canadians today are massively in favour of the broad principles of medicare as first introduced by the government of Saskatchewan, subsequently spread across the country through the use of the federal spending power, and enforced, in part, through the Canada Health Act. At the same time, many would question particular applications of the Canada Health Act: for example, to prevent the greater use of para-medical staff in Quebec.

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## **B. GOVERNMENT CLOSER TO PEOPLE, OR “SUBSIDIARITY”**

The principle of subsidiarity states that decision-making should be as close as possible to citizens. Government powers should be assigned to the lowest level where they can be effectively exercised.<sup>5</sup> Although this principle embodies a decentralist thrust, it also provides justification for moving jurisdictions upwards when there are important cross-border spillovers. The burden of proof, however, would lie with those arguing for control at the higher level. In our view, subsidiarity should be a key operational principle in rebalancing the federation, especially when it comes to reconfiguring the division of powers and reducing overlap and duplication. In some cases (e.g., labour market training), there should be a clear transfer of responsibilities from Ottawa to interested provinces. In other cases (e.g., environment), the principle of subsidiarity should be used to divide responsibilities between the levels of government. And in still other cases (e.g., securities regulation), the advantages of a single regulator may be such that all or most provinces elect to transfer responsibility to Ottawa. As implied by these examples, the principle of subsidiarity can be applied asymmetrically where appropriate. For example, some provinces may have neither the desire nor the resources to assume authority over, say, labour market training. Such provinces should be able to request that Ottawa continue to act on their behalf.<sup>6</sup>

## **C. DUALITY**

Canada is unique among the immigrant societies of this hemisphere. Countries of immigration receive people from widely different origins and bring about a convergence around a common public language; for instance, English in the United States, Spanish in Argentina, and Portuguese in Brazil. Canada alone has not one, but two, such languages of convergence, English and French. The centre of the area of geographic convergence on French, within a continent where English predominates massively, is the Province of Quebec. In this important respect, Quebec is not a province like the others; indeed, it is unique in this hemisphere. As the jurisdiction at the heart of the French zone of convergence, it has responsibilities and challenges unlike those of other provinces.

It follows, we believe, that the recognition and celebration of Canadian duality must be central to the rebalancing and revitalizing of our country, whether or not that recognition takes the form of a distinct society clause. In fact, francophone Quebecers see themselves as distinct, or as a nation. That is not going

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<sup>5</sup> While, in theory, subsidiarity calls for the devolution of powers to small communities or even families where possible, we think that in most cases this concept should be implemented in a two-stage process. For example, as argued below, the federal government should vacate the field of labour market training and turn it back to the provinces. Provinces may then elect to devolve parts of their responsibilities to municipalities or the private sector. Since labour market training is a provincial power under the Constitution, it would not be appropriate for the federal government to go over the heads of the provinces and devolve directly to municipalities or the private sector.

<sup>6</sup> Problems could arise if the principle of asymmetry were pursued with such vigour that areas of federal jurisdiction varied markedly across provinces. Under such circumstances, it would become necessary to address the issue of whether members of Parliament should be ineligible to vote in areas in which their provinces had opted for provincial jurisdiction. If, for example, only Quebec opted for full jurisdiction over labour market training, then it could be argued that Quebec MPs should refrain from voting on federal labour market policies that would not apply in Quebec.

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to go away. The only question is whether Quebecers will choose to develop and grow that nation inside or outside the federation. If inside the federation, Quebecers want this identity to be reflected in the Constitution of the political society to which they give their allegiance. This is the only durable basis of the Canadian union. If the enterprise of Canada is based on the hope that this duality might disappear, as against a proud affirmation of it, then our country cannot, in the long-run, survive. At some point, possibly before the end of 1997, this recognition must be enshrined in the Constitution. In the meantime, the duality principle should inform our actions on the non-constitutional front.<sup>7</sup>

It must also be admitted, however, that a yawning gulf has opened up between principle and perceived practice in the matter of duality and the distinct society clause. Many Canadians have come to see this principle as a smokescreen for special privilege and fiscal advantage — a point that leads naturally to our fourth theme.

#### D. FISCAL EQUALITY, OR FAIRNESS TO INDIVIDUAL PROVINCES AND CITIZENS

Equalization is the overarching redistributive program which ensures that provincial governments can provide their citizens with reasonably comparable public goods and services at reasonably comparable tax rates. Established in 1957, the principle of equalization was enshrined in the Constitution in 1982. Beyond this program, however, **federal spending should strive for neutrality of treatment of provinces and provincial governments, and its treatment of individuals should not depend on province of residence.** We begin with three examples involving clear and unambiguous contraventions of the principle of fiscal equality. Then, we turn to less clear-cut cases and to a discussion of what the principle of fiscal equality does **not** mean.

- As matters now stand, per capita payments to provinces under the Canada Health and Social Transfer (CHST) are less for the three “have” provinces (Alberta, British Columbia, and Ontario) than for the seven “have-not” provinces. This is mainly the legacy of actions taken by the federal government in the early 1990s to limit payments to “have” provinces under the Canada Assistance Plan, the so-called “cap on CAP”. That action is a good example of unilateralism on the part of the federal government, an action that flew in the face of the principles of both partnership and fiscal equality, while also undermining support for Canada’s tradition of inter-regional sharing. The federal government should certainly move towards equal per capita payments to the provinces under the CHST, as it is now doing, albeit at glacial speed.<sup>8</sup>

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<sup>7</sup> We do not address the very difficult issue of the “Quebec veto” or, more generally, the amending formula. One possibility, if the duality principle were incorporated in the Constitution, would be to require a “Quebec veto” for any subsequent change to that principle. Alternatively, or in addition, one could return to the Meech formulation, in which many categories of constitutional change were subject to the unanimity principle. More generally, however, we choose to leave this matter as “unfinished business,” focussing instead on other issues that seem more susceptible to agreement.

<sup>8</sup> Even this modestly stated point is debatable: while the federal government is moving towards more equal per capita total transfers to provinces (i.e., cash transfers plus tax points), it appears to be moving towards increasing inequality in terms of the cash component of the transfers.

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- Eligibility rules for unemployment insurance should not depend on province of residence, as is the case today.
  
  - Our third and final “easy” example illustrates the point that the principles of duality and fiscal equality can and must be applied simultaneously. It is perfectly logical and acceptable for Quebec to act in a different way from other provinces on matters of immigration, given its zone-of-convergence responsibility. This is a recognition of the duality principle. Yet there is no apparent reason why this should require Quebec to get 34 per cent of federal immigration funds while receiving 19 per cent of the immigrants (in 1992-93). This is an offence against the fiscal equality principle. And, the violation of the second principle makes it more difficult for Canadians outside Quebec to embrace the first. “Culturally distinct, but fiscally equal” could be a popular package throughout Canada — but the fiscally equal part of the slogan must be credible. We use this example because we want to emphasize the unity-related point that, if Canadians outside Quebec are to celebrate, or even accept, duality, then they must be persuaded that duality is point of principle, not an excuse for fiscal favouritism. It should go without saying that there are also many cases in which provinces other than Quebec have received “unfair” fiscal benefits from Ottawa.

These examples are relatively easy because they speak to equality of treatment of provincial governments as well as to the point that federal programs directed at individuals should be province-blind. The principle of equal federal treatment of provinces — as opposed to provincial governments — is much more difficult. After all, Canada’s political history is so littered with examples of pork-barrelling and roads to nowhere built just before elections, that some may think us naive even to advance the principle of fiscal equality.

We believe, however, that the renewal of Canada is a serious business. Canadians have become less tolerant of old-fashioned political pork-barrelling and less willing to pay the price for this unproductive activity. If provincial governments, under the terms of the Agreement on Internal Trade, are to forego preferential procurement and other provincial preferences, then the federal government should do no less. The principles under which federal spending decisions are made should be transparent. Regional disparities should be dealt with by equalization payments, as suggested by fairness, efficiency and the Constitution. “Regional development” expenditures should be phased out. Federal expenditures on research and development, and in other areas, should be province-blind and based on the merit principle, as is more or less the case for federal government university research grants today. None of this will happen overnight. Moreover, if our suggestions impose substantial costs on “have-not” provinces, we could end up with an enhanced, renegotiated equalization program. That may be. But better an enhanced equalization program than a pork-barrelling patronage-based system that fans the flames of regional animosities, creates dependency in “have-not” provinces, and puts the unity of the country at risk.

Indeed, we would argue that the fiscal equality principle is in the longer-term interest of rich and poor provinces alike. From the standpoint of the “have-not” provinces, the risk in our proposal is that the heavier burden placed on the equalization program could make that program more visible politically and possibly more vulnerable. The risk of the status quo is that arbitrary actions like the “cap on CAP” would undermine political support for inter-regional sharing in general. To a degree, this undermining process has already

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happened. We believe that Canadians are much more likely to support inter-regional sharing if it is done in a manner that is both principled and transparent. Moreover, the central point of our partnership principle is an end to unilateralism, not least federal government unilateralism with respect to equalization.

Finally, a word on what our principle of fiscal equality does **not** mean. It certainly does not mean that the federal government should cease to redistribute income, for example, through a progressive income tax system. Neither does it deny diversity. Since we have already referred positively to duality, flexibility and asymmetries, it should be clear that we are not proposing a system in which each province exploits its jurisdictional space in an identical manner. As documented by Milne (1991), our own past is replete with examples of flexible arrangements, and, as expressed by Watts (1995), “the essence of federalism is the recognition and accommodation of diversity....the insistence upon uniformity among the provinces misses this fundamental objective of federalism.” The only point we add is that this accommodation of diversity should also conform to the principle of fiscal equality.

## **E. STRONGER REGIONAL REPRESENTATION AT THE CENTRE**

Not infrequently, it is said that Canada is the most decentralized federal system in the world. This is a half truth. The other part of the “truth” is that Canada is also the most centralized federation in the world. This paradox lies at the heart of many of the political problems and frustrations Canadians have been wrestling with for more than three decades. Although Canada is decentralized in terms of the relative size of provincial and federal government expenditures, Canada is also the most centralized federal system in the world when it comes to selection procedures for important officials and amending procedures.<sup>9</sup> This is not new. It is inherent in Ottawa’s regulatory powers and the selection procedures for Supreme Court justices, senators, Bank of Canada directors, Crown corporation boards, and so on. Sooner or later, if only to enhance the legitimacy of the federal government, a revitalized federation will have to respond to those many Canadians who feel their regions are unfairly represented in central institutions. A part of this response will have to come “later” in the form of institutional or constitutional reform. However, as explained below, we believe that an important first step in this direction could be taken immediately. All that would be needed is the agreement of the prime minister and his cabinet.

## **IV. PROPOSALS: ROAD MAP AND PROCESS**

Now, having laid out our themes, we propose a plan to renew the federation. In so doing, we stress that our collective sense of modesty on these issues is real rather than affected. After all, since we are calling for a partnership approach and a good dose of democratic engagement, we are hardly in a position to pre-ordain the process or the substance of any future agreements. Nevertheless, as stated in the Summary, it seemed more useful to stick our necks out a bit in offering fairly specific suggestions, rather than confining ourselves to generalities that would do little to advance the debate. This section focuses on timing and process, while the substance of our ideas is developed in Section V.

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<sup>9</sup> An index of centralization for national institutions and practices shows that Canada is more centralized than the United States, Australia, Germany, and Switzerland. Although this index was constructed for 1978, Canada’s position today would not have changed significantly. For an in-depth discussion, see Marchildon (1996) and Elton *et al.* (1978).

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## PREVIEW

Figure 1 provides a road map, a chronological summary of where we propose to go. The *sine qua non* of Step 1, “Setting the Stage,” is a declaration by the federal government that it is prepared to engage in constructive partnership. Ottawa will not act unilaterally to set the agenda, control the process or determine priorities. Rather, it will involve its provincial partners on all of these matters. The partners might agree on limited, attainable short-term objectives (for example, some of the items we list under Step 2), while also expressing the hope that they will move to subsequent steps at a later date. No doubt the partners would discuss the possible shape of those future steps, including constitutional change, but they would make no binding commitments at this early stage (we return to the constitutional issue at the end of this subsection).

Step 2, “Assemble the Pieces,” to be completed in six to nine months, is a politically energized administrative route to work on some of the pieces that will be needed to construct a comprehensive agreement at a later stage. This work could include realigning responsibilities (including labour market training), developing goals, reviewing the federal spending power, implementing the Agreement on Internal Trade, and reforming the federal appointments process in certain areas. In our view, this work should be informed by the themes described earlier in this paper. The tasks are less daunting than they might seem since much of the work and some federal government commitments are already in place (see Figure 1). What is needed is an injection of political will based on partnership. At this early stage, we agree with Paquet (1996) that the administrative route would be more effective than our traditional practice of playing the “Canadian constitutional game... in Macy’s window, on a high stage where much stylization is required and where every move is scrutinized by the media.”

Depending on the degree of progress and consensus that had been reached, a formal process might be launched three to nine months down the road (Step 3), while the parties should aim to sign a non-constitutional Pact on the Canadian Social and Economic Union by the end of 1997 (Step 4). In the fifth and final step, the parties would seek to make limited changes to the Constitution.

On the thorny issue of constitutional change, we are attracted by the logic of André Burelle’s “win-win” proposal based on the following *quid pro quo*. On the one hand, Quebec would deliver on a new arrangement to reinforce, on a partnership basis, the Canadian social and economic union. On the other hand, the rest of the country would deliver the “substance of Meech,” as well as significant decentralization of powers. The logic of this plan implies that the two components should be delivered at the same time. Our road map shown in Figure 1 is certainly consistent with Burelle’s plan. Indeed, we think that the successful delivery of this package, in combination with other things, would be the crowning achievement in our efforts to renew the federation. At the same time, we are firmly of the view that it is too early to seek formal commitments to such a package at this time. As stated earlier, Canada cannot afford another failure, and formal commitments should be made only when the likelihood of success is very high. Nevertheless, informal discussions should certainly proceed with a view to formulating a definition of Canadian duality, or the “substance of Meech,” that would be acceptable to both Quebec and the rest of the country. Our own contribution to this debate is provided later in the paper.

Figure 1

## RENEWING CANADA: A ROAD MAP

Steps	Actions needed	Achievements to date	Timing
I. SET THE STAGE	<ul style="list-style-type: none"> <li>■ Federal government embraces partnership approach, based on fiscal equality, duality and subsidiarity</li> <li>■ Set short-term priorities/goals</li> <li>■ Discuss longer-term objectives, processes</li> <li>■ Ensure democratic engagement</li> </ul>		NOW
II. ASSEMBLE THE PIECES	<ul style="list-style-type: none"> <li>■ Realign responsibilities</li> <li>■ Work on goals, spending power</li> <li>■ Change selection procedures for central institutions</li> <li>■ Implement Agreement on Internal Trade</li> </ul>	<ul style="list-style-type: none"> <li>■ <i>Report to Premiers</i></li> <li>■ Agreement on Internal Trade</li> <li>■ Environmental Management Framework Agreement</li> <li>■ Federal commitments: spending power, labour market training</li> <li>■ Federal processes: Program Review</li> </ul>	COMPLETE IN SIX TO NINE MONTHS
III. LAUNCH FORMAL PROCESS	<ul style="list-style-type: none"> <li>■ Agree on formal process</li> </ul>		LAUNCH IN THREE TO NINE MONTHS
IV. SIGN THE PACT	<ul style="list-style-type: none"> <li>■ Agree on Pact on the Economic and Social Union</li> </ul>	<ul style="list-style-type: none"> <li>■ Work completed in earlier stages</li> <li>■ Draw on European, Australian experience</li> </ul>	SIGN BY END OF 1997
V. AMEND CONSTITUTION	<ul style="list-style-type: none"> <li>■ Deal with duality and possibly other matters</li> </ul>		LATER, POSSIBLY BY END OF 1997

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## PROCESS

There are two process issues: democratic engagement from the start and a formal process that could be launched three to nine months from now.

On the first point, it is important to recognize that Quebecers have been discussing the national unity issue for 30 years or more. In the rest of the country, the idea that the “unthinkable” could happen is only beginning to sink in. As a result, spontaneous citizen groups are sprouting up across English-speaking Canada. Francophone Quebecers, if only because they are much more acclimatized to the national unity debate, are tending to devote their time and energy to other issues.

We think that a certain amount of catch-up in this area is both inevitable and desirable. Therefore, it is important that resources be made available to help English-speaking Canadians make tough choices based on solid information. A “national suggestion box” could funnel ideas from individuals and citizen groups to official deliberations and to other citizens groups. It would be important to ensure an arms-length relation between governments and this grassroots political activity. Although some Quebecers may disparage this “grass roots democracy,” they should recognize that a certain amount of “rattrapage” is involved, a certain levelling of the playing field to equalize knowledge on the major issues that are important in the national unity debate.

Turning now to the formal process, it is not our intention to hang our proposals on any particular formula. But, in the context of our overall plan, we do put forward the following criteria which we think an effective process should meet:

- It should be genuinely intergovernmental and based on partnership.
- It should not be solely intergovernmental. It should provide opportunities for inputs from experts and from “ordinary citizens” through the democratic engagement process described above.
- It should focus on a limited number of subjects identified as priorities by participating governments. If we are right in our analysis to this point, the main focus would be the negotiation of a non constitutional pact, although limited constitutional change could either be included in the initial mandate or added to the mandate at a later stage.
- It should have some agreed-upon rules on deadlines and the degree of consensus required to make recommendations to governments.

Although we are not tied to any particular model, there is one feature of a recent proposal by the Canada West Foundation (1996), which we believe ought to be considered. This is the idea of having the various jurisdictions represented by **legislative** delegations that would include members of opposition parties at the federal and provincial levels. The changes to be considered, while non-constitutional in the first instance, may well have implications for our system of government for a decade or more. Democratic principles suggest that, under these circumstances, it would be appropriate to seek a form of proportional representation of the electorate through a process including opposition parties.

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It is possible that the Quebec government would participate in the process since many of the items on our proposed list would be of interest to Quebec, and, as stated at the outset of the paper, some 60 per cent of Quebecers seem to believe that Mr. Bouchard should try to negotiate renewed federalism with Ottawa and the other provinces. We feel, however, that the process should go on with or without the participation of the government of Quebec. That government would be free to join the group at any time or to affix its signature at a later date to any agreement that was proposed by the other partners.

## V. SUBSTANCE OF PROPOSALS

We turn now to the substance of our proposals under four headings: representation in central institutions, division of responsibilities, social and economic union, and duality.

### A. REPRESENTATION IN CENTRAL INSTITUTIONS

We begin with this topic because it is self-contained and because changes could be enacted very rapidly. This is an initiative that would respond directly to our fifth theme — stronger regional representation at the centre — and would help legitimize our central government in the minds of many Canadians. The failed Meech Lake and Charlottetown proposals are as close as Canadians have come since Confederation to realizing even modest institutional reform in this area. Non-constitutional reform in 1996 could reinforce the thrust of this report in demonstrating that renewal is not solely a response to Quebec's issues. Very simple actions could result in symbolic change that every Canadian would recognize.

The centrepiece of this reform should be the selection of Supreme Court justices, senators and directors of the Bank of Canada. Rather than having the prime minister appoint people to these institutions from lists prepared by his office, the prime minister would agree to appoint people from lists of nominees prepared by provincial governments as vacancies occur. Existing rules on regional or provincial composition would not change, and the federal government would continue to appoint the chief justice of the Supreme Court and the governor of the Bank of Canada.

Provincial governments would undoubtedly seek advice from the legal community on nominees to the Supreme Court, while nominees for Bank of Canada directors would probably be chosen by provincial cabinets. In western Canada, provincial governments would probably hold elections to choose nominees for the Senate. In other provinces, the situation is less clear. In the case of elected senators, the federal government could still be presented with a list, possibly consisting of those who came first, second and third in the election. Judging from Alberta's experience in the early 1980s, the federal government would likely choose the individual who placed first in the election.

These reforms would deal with key demands from both Quebec and western Canada. In fact, when combined with the other proposals in this paper, the package could be sold in Quebec as "Meech plus," though admittedly in an interim, non-constitutional form. Moreover, in granting a key role in these important appointments to the Quebec government, Ottawa would signal that it respected the democratic process in Quebec, whether or not it was philosophically aligned with the result of that process. Those westerners committed to fundamental institutional reform might feel short-changed by this package, if only because it

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does nothing on the number of senators from each province. It is our view, however, that a shift to elected senators would launch a dynamic that would significantly increase the pressure for more fundamental reform within a decade.

This last point is important. In itself, a simple change from Ottawa-based lists to province-based lists would not do a great deal. After all, the federally appointed governor of the Bank of Canada would remain in charge of monetary policy (the directors would continue to act in a purely advisory role), while the composition of the Senate would change only gradually as vacancies appeared. However, our proposal should not be seen as establishing a new **equilibrium**, but rather as creating a **dynamic disequilibrium**, which would, in the not-too-distant future, make the need to address fundamental reform more apparent. In particular, it is important to recognize that the Senate is a powerful body in theory, and our proposal would create a growing number of elected, newly legitimized senators who would be “feeling their oats” and anxious to exercise those theoretical powers. A two-class (elected and unelected), constitutionally powerful Senate would not be a stable legislative body. Further reforms would probably ensue before too long.

The deliberate creation of disequilibrium is not without risk. A goad to more fundamental reform, if ineffective, can become another outstanding grievance. Yet the stakes in the national unity game today are also very high, and western Canada will be key to its resolution. Our proposal is at least a first step in addressing long-standing aspirations of many western Canadians in a non-constitutional manner.

## **B. REALIGNING RESPONSIBILITIES**

### **Labour market training**

In accordance with both subsidiarity and fiscal equality, Ottawa should offer the entire field of labour market training to interested provinces with almost no strings attached. The only “string” should involve implementation of certain provisions of the Agreement on Internal Trade, which provisions have already been agreed to by all provinces and the federal government (see below under “Economic Union”). The federal offer should certainly include an equitable share of the training component of unemployment insurance revenues. At the same time, partly because it is in the Constitution, most of us think that the basic unemployment insurance program should remain in federal hands. The federal government should no longer spend money on training in provinces that elect to assume their labour market training responsibility, and such provinces should be compensated in accordance with the principle of fiscal equality.

This is certainly not to imply that all provinces will choose to go this route. For example, on March 13, 1996, Alberta and Canada announced the creation of co-located service centres offering training, employment assistance, income assistance, and career and job search information.

Subject to our *caveat* relating to the Agreement on Internal Trade, we think that Ottawa should move quickly to honour its commitment in the Speech from the Throne to vacate the field of labour market training, countering the confusion arising from subsequent official statements that seemed to contradict that commitment. We are at a loss to understand why the federal government would wish to drag its feet on this issue. Every day large numbers of job seekers are frustrated by the absence of a coherent, simple set of programs to get them trained and back to work. This is a frustration that serves to drag the federal government into disrepute.

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## Other sectoral agreements

Building on all the work that has been done already,<sup>10</sup> we should see the negotiation of more administrative agreements over the next six months. Candidates for shifting responsibilities exclusively or partially to the provinces include those mentioned in the Speech from the Throne (forestry, mining and recreation), as well as the additional fields mentioned in the Charlottetown Accord (culture, broadcasting, tourism, housing and municipal/urban affairs).<sup>11</sup> Not all shifts in responsibilities would be “downwards.” If, as was also suggested in the Speech from the Throne, all or several provinces elected to shift their responsibilities to Ottawa in the creation of a Canada Securities Commission, a single food inspection service or a national revenue collection agency, then so be it. Such moves would probably increase efficiency, while still allowing provinces choosing not to join to “do their own thing.”

We do not make recommendations on shifts in particular powers or responsibilities (other than labour market training), as priorities are likely to emerge in the consultative process under Step 1. We do, however, agree with Paquet (1996) when he writes that the results of administrative negotiations must be “sufficiently dramatic that crusaders on the high road of constitutional reform would have no choice but to acknowledge that, indeed, a reframing of the central issues is under way.” Also, so long as the principles of duality and fiscal equality go hand-in-hand, we cannot see why there should be objection or surprise if different provinces negotiate quite different agreements in a number of areas.

## C. SOCIAL AND ECONOMIC UNION

The crowning achievement of non-constitutional negotiations would be the signing of a Pact on the Canadian Social and Economic Union. The single most important purpose of the Pact is to maintain social and economic cohesion at a time when responsibilities, on balance, are shifting towards provincial governments and, through provincial governments, to municipalities and non-governmental agencies. One model for such a pact is seen in Figure 2. The main ingredients include common objectives, the division of responsibilities (just discussed), guidelines for the federal spending power, mechanisms for handling interdependence, common standards for social programs, a code of conduct for the economic union, and enforcement. This is a tall order, and we are certainly not equipped with a blueprint at this relatively early stage. Instead, we offer a few general comments, followed by recommendations in some areas.

While most of us favour the Pact and appreciate its benefits, there will be debate over its desirable scope and powers, a debate not unlike that between the proponents of European integration and the British “Eurosceptics.” While some will argue for a broad range of enforceable, pan-Canadian standards, others — including us — will argue that excessively strong standards will kill provincial government innovation and homogenize Canada’s diversity. We would certainly agree that all Canadians moving to, say, Victoria should

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<sup>10</sup> See Figure 1 above. In particular, the Environmental Management Framework Agreement is a model of subsidiarity in action which could be applied to other sectors. That Agreement (still in draft form) isolates areas of spillover, or “externalities,” and assigns these to the federal government. Most other dimensions of environmental policy are assigned to the provinces.

<sup>11</sup> This is not to suggest that all of these fields should be exclusively provincial. We are not, for example, suggesting “decentralization” of the CBC, the Canada Council, the National Art Gallery or the National Film Board.

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Figure 2

## PACT ON THE CANADIAN SOCIAL AND ECONOMIC UNION

### CONTEXT

A new partnership approach can be undertaken without opening the Pandora's box of constitutional reform. If a Pact on the Canadian Social and Economic Union is signed on an administrative basis and works well, it could always be entrenched in the Constitution at a late date.

### PURPOSES OF THE PACT

- to set out common objectives;
- to support a clearer definition of powers and responsibilities;
- to establish guidelines for the use of the federal spending power;
- to manage government interdependence;
- to provide a public venue for ongoing review of the functioning of the union.

### COUNCIL OF FIRST MINISTERS

To achieve these goals, the Pact would create a Council of First Ministers. The Council would:

- establish decision-making rules that would be unanimously agreed upon;
- depending on the matter to be decided, the decision rules could vary from a simple majority to a weighted majority or unanimity, with or without a federal veto.

### OUTCOMES

The Council, using its decision-making rules, could:

- establish a stronger and more legitimate Canadian **social union** by putting the federal spending power at the service of common objectives and by establishing minimum common standards for social programs, established by co-decision;
- reinforce the Canadian **economic union** by agreeing to a Code of Conduct covering the free movement of persons, goods, services and capital across Canada and, perhaps, by agreeing on harmonized fiscal policies.

### ASSESSMENT, REVIEW AND ENFORCEMENT

The decisions of the Council could be enforced or reinforced by a combination of:

- an arbitration panel or panel of experts;
- public opinion;
- the federal government.

*Adapted from Burelle (1995, 1996)*

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have the same government entitlements as lifelong residents of that city. But if, going well beyond this principle, strong pan-Canadian norms and standards had applied in the 1960s, then maybe Saskatchewan would have been unable to implement its vision of a public, universal health care system — and who knows whether or not we would have medicare today?

Moreover, if decisions require large majorities or unanimity, then might we not stifle the government risk-taking and innovation that will ultimately give rise to a better system? Others, as in Europe, will worry about the “democratic deficit” arising from intergovernmental decision-making. If many responsibilities are shared and accountability is dispersed, then which politicians should the electorate turf out if things are not to their liking? Still others will worry about preserving a broad enough role for the federal government, agreeing with Watts (1995) when he writes that “all federations need a central focus of loyalty able to deal effectively with matters of common interest if the federation is to hold together over the long term.” Mindful of these concerns, we turn now to recommendations relating to the social and economic union.

### **Common objectives**

The *Report to Premiers*<sup>12</sup> is a good starting point for setting social goals. The four central themes of the report are that social programs must: (a) be accessible and serve the basic needs of all Canadians; (b) reflect our individual and collective responsibility; (c) be affordable, effective and accountable; and, (d) be flexible, responsive and reasonably comparable across Canada. More specifically, with labour market training to be transferred to the provinces, we think a revised *Report to Premiers* might emphasize more clearly that here is the fundamental unmet social policy need of the decade. Just as medicare, initiated by Saskatchewan, was the key social policy of the 1960s, so the top social policy priority for provincial governments in the 1990s must be the task of ensuring that all Canadians are equipped with “human capital.” In the medium-term, it is this issue more than any other that will determine Canada’s prosperity in the world economy and our capacity to create the employment opportunities that Canadians so badly need. The elements of such a policy are set out in Figure 3.

### **Federal spending power**

The Speech from the Throne contained the following statement:

“The Government will not use its spending power to create new shared-cost programs in areas of exclusive provincial jurisdiction without the consent of a majority of the provinces. Any new program will be designed so that non-participating provinces will be compensated, providing they establish equivalent or comparable initiatives.”

This position is certainly consistent with the partnership approach envisaged by our Pact. Possibly the majority of provinces could be defined according to the 7/50 formulation, or seven provinces making up at least 50 per cent of the population. We would go one step further, however, retaining the opting out and compensation provisions, but dropping the requirement that non-participating provinces must establish

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<sup>12</sup> The Ministerial Council on Social Policy Reform and Renewal was formed as a result of the August 1995 Provincial Premiers Conference. The *Report to Premiers* was a result of this initiative, although it should be mentioned that the Government of Quebec was not a participant in this process.

Figure 3

### Elements to enhance “human capital”

- better public schools;
- better retraining for established workers losing jobs due to technological change and increased Canadian participation in world markets;
- better transition from school to work for those who do not go to university;
- better training programs for the distressingly high percentage of employable Canadians on the welfare rolls;
- social assistance designed to encourage parents to work and train, e.g., through earnings subsidies;
- improved mutual recognition of standards;
- much more vigorous programs to enhance employment opportunities for aboriginals — today aboriginal employment/population ratios are as low as for U.S. black youths.

While most of these items fall under provincial jurisdiction, there is an important role for the federal government in the areas of mobility and aboriginals.

“equivalent or comparable initiatives.”<sup>13</sup> Moreover, non-participating provinces should be allowed to opt in at a later date without financial penalty and in conformity with the principle of fiscal equality. The fact that at least half the country would be included in new shared-cost programs (under the 7/50 rule) could put pressure on non-participating provinces. Also, provinces may have different preferences or priorities in carrying out their social policy responsibilities.

#### Stable funding

Reasonably stable funding by the federal government is an essential ingredient of an effective partnership. The administrative discipline imposed by the recognition of equalization payments on a regular five year cycle should be generalized to other areas. It is encouraging that in its March budget the federal government moved in the direction of greater predictability of transfers to the provinces.

#### Enforceable social standards

The Canada Health Act is one of the main ways that the federal government enforces common standards. As indicated above, we would favour a system in which all partners endorsed such a policy and agreed on a means of enforcement. However, pending such an agreement, most of us favour keeping the Canada Health Act intact. It is popular among Canadians from all parts of the country, and, in any case, its main provisions were a reflection of provincial practices at the time it was enacted in 1983-84. It is possible that discussion and negotiation will lead to pan-Canadian standards in other areas as well.

#### Monitoring and benchmarking

University administrations pay attention when the annual *Maclean's* university rankings hit the newsstands. The same was true for Quebec schools when *l'Actualité* published similar rankings. People benefit from

<sup>13</sup> Compensation for non-participating provinces should be in accordance with the fiscal equality principle. For example, compensation might be related to average per capita federal expenditures in participating provinces.

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information showing how their schools, universities or health delivery stack up against those of neighbouring towns or provinces. And the quality of service of delivery is likely to respond to such publicity. As provincial governments assume greater responsibilities in the sphere of social policy, it will become increasingly important to develop a capacity to monitor and benchmark relative performance levels and successes and failures. Ideally, such monitoring should be subject to mutual agreement and emerge from the federal-provincial Pact, but whatever the process, the principle is one that should be promoted vigorously.

### **Economic union**

Many of the important mobility issues have already been addressed in the Agreement on Internal Trade. In particular, the Agreement contains commitments to greater harmonization of labour standards and mutual recognition of training standards. The parties should empower the Internal Trade Secretariat to put together a comprehensive package of the technical measures necessary to achieve these, and other, objectives of the Agreement. This work could probably be completed in six to nine months.

Because of spillover effects, provincial governments might provide less training or education than is appropriate from the standpoint of the country as a whole. For example, if many of the graduates of Dalhousie University's Law School migrate to other parts of the country, then some of the benefits of Nova Scotia's investment in education accrue to other provinces. One possible approach might be to agree to direct the provincial component of income tax paid by Dalhousie graduates to the government of Nova Scotia for a number of years, whether or not the individuals lived in Nova Scotia.

In the medium-term, further measures might be adopted, possibly involving the coordination or harmonization of fiscal policy (although now that governments of all political persuasions are moving towards balanced budgets, the matter has become less pressing than it was in the late 1980s).

### **Non-duplication**

It is certainly not our intent to add a layer of duplication to work that is already being done. Indeed, it might be possible to staff a Secretariat under the Pact with no net increase in positions since appropriate existing government functions could be transferred to the Pact. For example, the Internal Trade Agreement and its Secretariat could be subsumed into the Pact in developing the Code of Conduct. We obviously do not need two parallel bodies with overlapping responsibilities. The responsibilities of this Secretariat could be broadened to include, for example, reporting on whether goals were being met and making recommendations on how these goals could be achieved in areas such as subsidiarity and the social union. The Secretariat could also be entrusted with the benchmarking part of our proposal.

### **Role of the federal government**

Under our plan, the federal government would probably do less, but it would have the opportunity to do what it did do better and with greater legitimacy. Measures to broaden selection procedures and promote administrative duality would enhance the legitimacy of the central government in western Canada and Quebec, the two regions of the country where federal legitimacy is most in question. Moreover, we have suggested that some powers might move “up” and that the federal government would retain selected social policy functions, notably unemployment insurance, pensions, and the implicit dimensions of social policy embedded

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in the responsibilities for the income tax system. And, of course, the federal presence would remain fundamental and largely unchanged in many areas that we have not discussed: examples include defence, foreign affairs and international trade relations, science and technology, and certain dimensions of Canadian heritage, culture, and environment.

Perhaps most intriguing is the possibility that the federal government could embrace partnership wholeheartedly and **invest** in both enhanced legitimacy (as just described) and an improved reputation for fairness and evenhanded behaviour (for example, through the principle of fiscal equality). Then, over time, the other partners might be willing to entrust the federal government with a larger enforcement and mediation role in meeting common goals and regulating the economic union. After all, from a pure efficiency standpoint and at least as a theoretical proposition, enforcement by the federal government is probably superior to enforcement by tribunals or panels of experts. While all of this would require a sea change in the attitudes of many people, in the long-run, such a system might provide the greatest benefits to Canadians, as well as the most durable union.

#### D. DUALITY

Canada has, since its origins, rejected the U.S. “melting pot” approach. As argued by Burelle (1995) and others, this is seen in the clear recognition of aboriginal people’s ancestral rights in the Royal Proclamation of 1763, in Quebec’s right to preserve its distinctiveness through the 1774 Quebec Act, and in the historical rights of English-speaking minorities in Quebec and French-speaking minorities outside Quebec. Recognition of Canada’s present-day duality would be a natural corollary or footnote to this long historical tradition.

However, for a variety of reasons, this tradition in general, and the distinct society clause in particular, have become red flags for many Canadians. That is why we are not proposing constitutional change as among the first steps in our plan. Instead, we have proposed that duality be one of the principles informing non-constitutional actions taken to rebalance and revitalize the federation. We have also stressed the importance of fiscal equality in implementing these changes. We hope that progress along this path will recreate a climate of greater mutual trust and good will, in which constitutional issues can be once more approached with greater hope of agreement. Equalization provides an example of a program that was initially administrative in nature but subsequently became entrenched in the Constitution.

As stated earlier, the best outcome, but one which seems ambitious at the time of writing, would be to secure agreement on limited constitutional change by the end of 1997. Depending on political dynamics that are unpredictable at this time, such constitutional change might also include Senate reform and measures relating to aboriginal peoples.

It is important to note that some respected Quebecers believe that we should rule out constitutional change for the foreseeable future. For example, Alain Dubuc, editorial page editor of *La Presse*, writes: “As you know, I have always believed that the possibility of an agreement does not rest in a remake of Meech — better let sleeping dogs lie — or a debate on the distinct society, but rather in the unfolding of the process of decentralization which meets with approval in several regions of Canada.” (*Toronto Star*, March 31, 1996)

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While we certainly respect such opinion, prudence demands that Canadians contemplate constitutional change not too far down the road. Apart from the justice of the cause, there is at least a reasonable chance that constitutional recognition of duality will become essential to the preservation of national unity.

We turn now to three alternatives for recognizing Canada's duality. Although most of us believe that we should aim for the "substance of Meech," possibly accompanied by a fiscal equality clause, we also acknowledge that there is more than one way to define this "substance" and that we must also consider alternatives in the event of failure.

### **Option A: Retain the distinct society formulation or its equivalent**

The advantage of retaining the Meech Lake formulation unchanged is that it resonates in Quebec and Premier Bouchard has historical ties to that "minimum package." The disadvantage is that, under current circumstances, this formulation will be a very hard sell in the rest of the country. We suggest three ways of improving "saleability" **without watering down content**.

- **Focus on duality and two zones of linguistic convergence** Limited experience suggests that English-speaking Canadians respond favourably to this concept. As noted earlier, it is an undeniable fact that Canada is unique in the western hemisphere as a country of immigration based on two languages of convergence and two distinct zones of linguistic convergence. Quebec, alone in the western hemisphere, is a sub-national jurisdiction in which people converge on French. Given this challenge, Quebec needs not only to protect, but to promote, its French distinctiveness, in full respect of the rights of its English-speaking and aboriginal minorities. The courts should take those facts into account in their interpretation of the Charter and the gray areas of the Constitution. One way of implementing this idea, while also retaining the concept of "distinct society," would be to insert an additional clause into the Meech formulation.<sup>14</sup>
- **Add a fiscal equality clause** As already argued, "culturally distinct, but fiscally equal" is a slogan that could command widespread support across the country. If appropriate wording can be found, the insertion of a fiscal equality clause in the Constitution would give teeth to that slogan.
- **Find alternative language** It is obvious that political baggage is attached to the two words "distinct society." Therefore, it would certainly be beneficial if someone came up with an alternative, but equivalent, formulation. We are not holding alternative language in reserve and we have just presented our ideas on the zones of linguistic convergence and the fiscal equality clause. If others have novel ideas in this area, let them come forward.

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<sup>14</sup> For example, the Meech Lake formulation could be amended to state [in clause 2.(1)(b)] that the Constitution of Canada shall be interpreted in a manner consistent with "the recognition of the fact that Canada is characterized by a fundamental duality in that, unlike all other countries in the Americas, public life in Canada does not tend to converge to a single language. On the contrary, both English and French constitute languages of public life, each having preponderance in its own geographic area." Other clauses would remain unchanged, apart from a renumbering to incorporate the addition.

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### **Option B: Provincial jurisdiction over language**

A second option is to adopt a constitutional amendment that defines more explicitly the respective powers of the provinces and Ottawa over language and other cultural matters. One variant, inspired by the Pepin-Robarts Task Force, would preserve bilingualism in the federal jurisdiction and recognize certain official language minority rights but, beyond that, would accord jurisdiction over the public use of language to the provinces. Another variant would limit the redefinition of powers over language and culture to an arrangement between Ottawa and Quebec.

This alternative has the advantage of addressing explicitly the important matter of preserving French as the dominant public language in Quebec. In an opinion survey conducted in 1995, 56 per cent of francophone Quebecers concluded that French would be more secure in an independent Quebec. This reveals the extent to which francophone Quebecers fear that, if Quebec remains a province within Canada, political constraints may prevent the Quebec government from adequately defending the majority language. In particular, anxiety exists that future challenges based on the Charter of Rights and Freedoms may weaken Bill 101, the Quebec language charter. Bill 101 is extremely popular among francophone Quebecers, and this alternative would strengthen its constitutional legitimacy.

Two of the signatories have argued for provincial language jurisdiction in preference to a distinct society clause [see, in particular, Richards (1995)]; however, most of us remain unconvinced. Devolution of language jurisdiction to all provinces could be popular among francophone Quebecers and many outside Quebec, but it could also arouse passionate opposition from Quebec anglophones and francophones in the rest of the country. Devolution to Quebec alone would pose the problem of explicit asymmetric powers among provinces. In any event, most of us believe that a distinct society clause or its equivalent would have greater appeal in Quebec than explicit devolution of powers over language and culture. All of us, however, are forced to admit that this first choice might fail and that alternatives must be considered.

### **Option C: An intermediate position**

Finally, an interesting variation on these themes is proposed by Marchildon (1996a). He recommends exclusive provincial jurisdiction over language, coupled with a weaker version of the distinct society clause than that contained in Meech. His distinct society clause would apply only to the Charter (as opposed to the whole Constitution) and only in matters pertaining to Quebec's language, culture and civil law tradition. Marchildon suggests that the combination of language jurisdiction and a limited distinct society clause might be acceptable to Quebec and also more palatable to English-speaking Canadians.

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Whatever form of words is chosen, we are persuaded that the great majority of Quebecers desire a formal recognition of their specificity — of their identity — and that Canada as a whole should accede to this desire. Such recognition conveys respect for cultural and linguistic differences and a commitment that these characteristics can be secure within Canada.

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## VI. CONCLUSION

Canadians have more in common than the weather. We share the third oldest federation in the world. That is a lot of experience living together. In that long experience together, there have been times of profound conflict and times of dramatic adaptation. To make Canada work better, it is time to move from tension to adaptation. All our experience together as Canadians tells us so.

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