

# CANADA QUARTERLY

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January 1996

## GOVERNMENT OF CANADA INTRODUCES UNITY MEASURES

Prime Minister's Office



In a speech given on October 24, 1995, during the Quebec referendum campaign on separation, which was defeated, Prime Minister Jean Chrétien committed his government to respond to his fellow Quebecers' desire for the country "to change and evolve toward their aspirations."

"No means are off-limits to bring about change and modernization within Canada," he went on to say. "What is important is that those changes be realistic and in keeping with what our citizens want."

The Prime Minister made three specific commitments to Quebecers:

- to recognize Quebec as a distinct society within Canada;
- to make no constitutional changes affecting Quebec without its consent; and
- to undertake changes to bring decision-making and services closer to citizens.

On December 11 the House of Commons passed the first of three initial measures for change, a motion to recognize that Quebec is "a distinct society within Canada," by virtue of its French-speaking majority, unique culture and civil law tradition. The resolution does not have the force of law but commits the House to "undertake to be guided by this reality." On December 14, the Senate passed an identical resolution.

The second measure is legislation that, in effect, lends the government of Canada's veto over constitutional change to the five regions of the country. This bill will require the consent of Quebec, Ontario, British Columbia, two of the three Prairie Provinces and two of the four Atlantic Provinces before any

constitutional amendment can be proposed in Parliament by the government of Canada. (The formula will also give Alberta an effective veto since its population amounts to more than half the total for the Prairies.) The bill fulfills the Prime Minister's promise that the Constitution would not be changed without the consent of Quebecers. Currently most constitutional amendments require the consent of Parliament and that of seven provinces with 50 per cent of the population. (See article on the Constitution on this page.) The bill was passed in the House on December 13 and is now before the Senate, which is holding public hearings in January.

The third measure is withdrawal by the federal government from the administration of labour-market training and co-operative education programs in favour of the provinces, which have constitutional jurisdiction over education. It responds to a longstanding

demand by Quebec and other provinces for more control over manpower training. In announcing the federal withdrawal, the Prime Minister said it is a first step in fulfilling his promise to bring the decision-making process closer to citizens and to reduce overlap and duplication in the delivery of services. It represents, he said, "a real partnership with the provinces which we will then be able to reproduce in other fields of activity."

None of the measures involve constitutional change because, as Mr. Chrétien said, "the government of Quebec clearly indicated that it did not want to participate in such discussions." But, he added, "...if Quebec and the other regions consented, these initiatives could be entrenched in the Constitution."

The Prime Minister has appointed a nine-member cabinet committee that is exploring other possible areas for change.

## CONSTITUTIONAL BACKGROUND

Canada's Constitution is not a single document as in the United States. It is made up of acts of the British and Canadian Parliaments and British orders-in-council, as well as legislation, judicial decisions, and agreements between the federal and provincial governments. It also includes unwritten elements such as British constitutional conventions, established custom, tradition and precedent, which govern the operation of parliamentary democracy in Canada at the federal and provincial levels.

Its basic foundations are the Constitution Act, 1867, which created a federation of four provinces—Ontario, Quebec, Nova Scotia and New Brunswick—under the British Crown; and the Constitution Act, 1982, which trans-

ferred control over the Constitution from Britain to Canada and entrenched a Charter of Rights and Freedoms and a formula for constitutional amendment.

The Constitution Act, 1867 (formerly known as the British North America Act) contains the fundamental division of powers between the federal and provincial governments. The Fathers of Confederation, influenced by the long struggle over states' rights in the U.S. that culminated in a bloody civil war, intended to create a strong central government. They gave the government of Canada jurisdiction over national matters such as defence, trade and foreign policy, transportation and communications, as well as the power "to make laws for the peace, order and good

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## CONSTITUTIONAL BACKGROUND

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government of Canada" except for subjects specifically assigned to the provinces. (The U.S. Constitution reserves all unspecified powers to the states.) Areas under exclusive provincial jurisdiction include education, natural resources, hospitals, property and civil rights, all considered in 1867 to be purely local and relatively unimportant. Some subjects, such as immigration, are areas of shared jurisdiction.

Interpretation by the courts (particularly the Judicial Committee of the British Privy Council, which was the court of last appeal for Canada until 1949) as well as circumstances (such as governments' responses to the Great Depression and the Second World War) have significantly altered the importance and reach of the powers exercised by each level of government.

The Constitution Act, 1867 contains specific provisions designed to protect the distinctiveness of Quebec. It recognizes Quebec's civil code as distinct from the English common law in effect in the other provinces, and provides for the use of English and French in the national and Quebec legislatures and courts and for publicly funded separate schools for Protestant and Catholic minorities in Quebec and Ontario (and later in Manitoba, Saskatchewan and Alberta).

After Confederation Canada gradually assumed more autonomy over its own affairs until its independent status (and that of the other dominions) was recognized in the Balfour Report of 1926. Beginning in 1927, discussions were held about patriating Canada's Constitution—transferring control from the British Parliament to Canada—but the provinces couldn't agree on a constitutional amending formula. Consequently, when Canada officially ceased to be a British colony with passage of the Statute of Westminster in 1931, authority to amend the Constitution remained in Britain. Despite many discussions and several formal conferences, agreement on an amending formula proved elusive for the next half century.

In 1980, following the defeat of the sovereignty-association option in the first referendum in Quebec, the federal

government launched a round of constitutional talks with the goal of patriation, fulfilling a promise of "renewed federalism" made to Quebecers by Prime Minister Pierre Trudeau. When a series of federal-provincial meetings failed to reach agreement, the federal government decided to proceed unilaterally. Most of the provinces protested, and the issue eventually reached the Supreme Court of Canada. It ruled that while unilateral action by Parliament was not illegal, it was contrary to constitutional convention which held that a "substantial degree" of provincial consent was required.

After intensive negotiations at a first ministers' conference in November 1981, the federal government and all the provinces except Quebec agreed on a constitutional package that included a comprehensive amending formula, a Charter of Rights and Freedoms, entrenchment of the principle of equalization payments to the poorer provinces and a strengthening of the provinces' control over natural resources. Despite support for the agreement by a large majority of Quebec representatives in the federal Parliament, the Quebec National Assembly rejected it on the grounds that it limited its legislative powers without its consent. The Constitution was patriated without Quebec's consent in 1982 (although the Supreme Court subsequently ruled that the province was bound by it).

Under the amending formula contained in the 1982 act, most constitutional changes must have the consent of Parliament and seven provinces representing 50 per cent of the population. Some amendments, including any that affect the office of the Queen or her representatives in Canada, the use of English and French at the national level or the amending formula itself, require the unanimous consent of Parliament and the provinces. The formula allows a provincial legislature to opt out of an amendment that takes away any of its powers, rights and privileges.

The Charter of Rights and Freedoms includes a clause that permits Parliament or a province to override some of the protected rights by passing legislation (which lapses if not renewed every five years) stipulating that the act will go forward "notwithstanding" the Charter. Quebec invoked this clause in 1988 to restrict the use of English on commercial signs but did not renew it.

The Constitution was amended in 1983 to add to the Aboriginal and treaty rights of Canada's Aboriginal peoples,

which were recognized in 1982.

There have been two major attempts since 1982 to satisfy Quebec's constitutional concerns. The Meech Lake Accord, signed in 1987 by Prime Minister Brian Mulroney and all 10 provincial premiers, would have entrenched recognition of Quebec as a distinct society in the Constitution. It also would have given provinces the right to opt out of shared-cost programs with compensation in areas of provincial jurisdiction, clarified provincial power over immigration, provided for the appointment of Supreme Court judges and senators from provincial lists, and changed the amending formula to require unanimous consent for certain institutional changes (including the creation of new provinces in the territories). Manitoba and Newfoundland failed to ratify the accord within the three-year deadline and it lapsed.

The package of constitutional reforms known as the Charlottetown Accord was negotiated in 1992. In addition to recognizing Quebec's distinct society in the preamble of the Constitution, it addressed a broad range of other issues, including redistribution of federal-provincial powers, Aboriginal self-government, Senate reform, and increased representation for the West in the House of Commons. This agreement was defeated in a national referendum.

Under the 1982 Constitution Act, a federal-provincial conference must be held by April 1997 to review the amending formula.

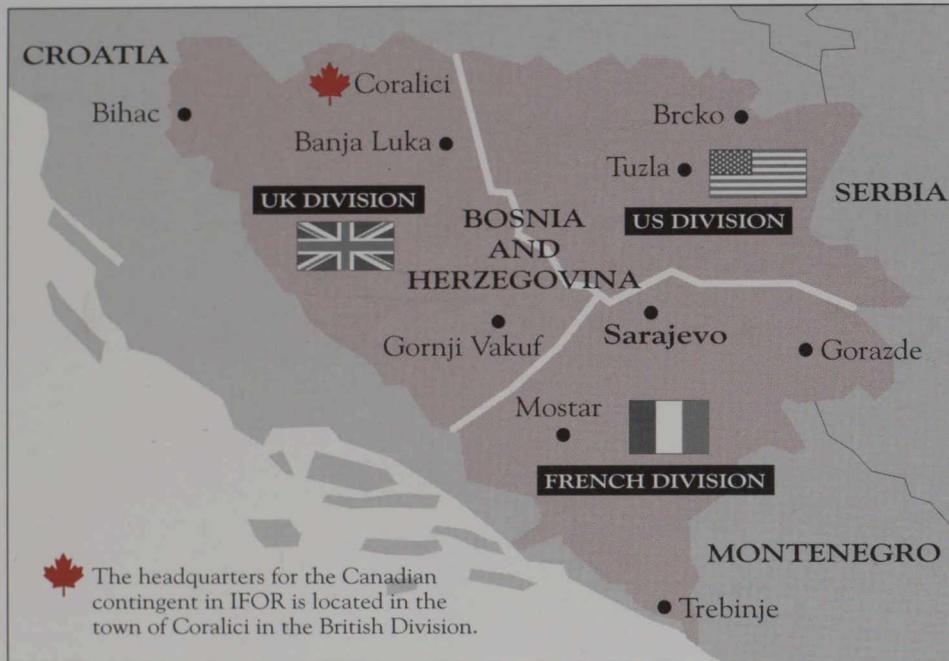
### U.S. Customs Preclearance Coming to Ottawa

Following a recent new agreement, beginning in 1996, business travellers and tourists flying to the U.S. from Ottawa, and eventually Halifax, will be able to pass through U.S. customs and immigration before boarding.

In the past, travellers from Canada's capital had to pass through U.S. customs after landing in the U.S., sometimes necessitating detours to airports having customs facilities, or making it difficult to catch connecting flights. Airports in six other Canadian cities—Vancouver, Edmonton, Calgary, Winnipeg, Toronto and Montreal—already have pre-clearance facilities.

The two countries have also established a bilateral working group on the issue of "one-stop" preclearance for international travellers, which would allow them to pass through a Canadian airport on their way to the U.S. without having to clear Canadian customs and immigration inspection.

## CANADA SENDING TROOPS AND AID TO BOSNIA



Bosnia. It is one of 10 countries and organizations which are members of a Steering Board created by the London (England) Peace Implementation Conference to advise Carl Bildt, the former Swedish prime minister appointed to coordinate the civilian elements of the Dayton Peace Accord. At the December conference, which dealt with civilian aspects of implementing the peace agreement, Foreign Affairs Minister André Ouellet said that in addition to continuing humanitarian assistance, Canada will "focus on social rehabilitation and the development of democratic and just societies because economic restoration alone will not secure peace." Canada is providing technical assistance to the Organisation for Security and Co-operation in Europe in setting up free, democratic elections, which are to be held within six to nine months of the signing of the peace agreement in December, and in the creation of national human rights institutions. Canada will also provide expertise to the U.N. for the establishment of an International Police Task Force and will continue to support the work of the international tribunal investigating war crimes.

Mr. Ouellet said the return of refugees to their homes is "of vital importance" and Canada will contribute to the efforts of the U.N. High Commissioner for Refugees. It will also provide humanitarian assistance through the U.N. World Food Program, the Red Cross and Canadian non-governmental organizations.

Mr. Ouellet has appointed Michael Berry, a senior diplomat, to coordinate Canada's role in the civilian and reconstruction aspects of peace implementation in the former Yugoslavia.

Canada is contributing 1,000 troops to the NATO-led Peace Implementation Force (IFOR) in Bosnia, Defence Minister David Collenette announced in December. The decision was made by the Cabinet, following debate in the House of Commons.

The consent of Parliament is not required, but Prime Minister Jean Chrétien's government has regularly consulted Parliament before making major foreign policy commitments.

Canada is providing the headquarters and the commanding general of a multinational brigade, which includes 850 Czechs and about 1,200 soldiers from a third country, assigned to the British military sector of Bosnia northwest of Sarajevo. The Canadian contingent will also include an armoured reconnaissance squadron, a signals unit and an infantry company. The troops, which should be fully deployed by mid-February, will stay in Bosnia for no longer than a year.

Some 11,500 Canadian troops served from 1992 to the end of 1995 with the United Nations Protection Force in the former Yugoslavia and with NATO air and sea forces in the Balkans. Ten Canadians lost their lives and 100 were wounded.

Opening debate in the House of Commons on Canada's contribution to the NATO Force, Mr. Collenette said that Canada has a "moral obligation" to take part. "As a founding member of

NATO and a major contributor to the alliance over the years, Canada is expected to participate in this historic mission." He cited Canada's peacekeeping experience in the former Yugoslavia and said: "Canadians have been there. They know the terrain....the circumstances....the people....the culture....it is logical for Canadians to be part of the international effort led by NATO."

The Canadian participation in IFOR is expected to cost about \$29 million. As a member of NATO, Canada will contribute an additional \$20 million to the mission.

Canada is also involved in rebuilding

## CANADA - U.S. EDUCATIONAL EXCHANGE

The Foundation for Educational Exchange between Canada and the United States of America (Canada-U.S. Fulbright Program), which awards fellowships and scholarships to Canadian and American scholars to teach, study or conduct research in the other country, celebrates its fifth anniversary in 1996.

The program's parent, the Fulbright International Exchange Program, was founded 50 years ago under legislation introduced by Senator J. William Fulbright, Democrat of Arkansas, who died in February 1995 at the age of 89.

The simple purpose of the reciprocal educational exchange, according to the Senator, is to "erode the culturally rooted mistrust that sets nations against one another."

Canada joined the Fulbright program in 1990 through a binational agreement that created the Foundation. The program is supported by grants from the Canadian and American governments and from corporate donors and foundations in both countries.

Since the 1991-92 academic year,  
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## GOVERNMENT SETS TOUGHER DEFICIT TARGET

Finance Minister Paul Martin announced in December that in pursuit of its goal of a balanced budget, the government will bring the federal deficit down in 1997-98 to 2 per cent of Gross Domestic Product (GDP), its lowest level since 1982.

The government's ultimate goal, Mr. Martin said in an economic and fiscal update presented to the House of Commons finance committee, is an economy that is growing faster than the national debt. "Our strategy must be based on synergy," he said. "Neither growth nor deficit reduction is sufficient alone but pursued together, they can do the job."

To reach a balanced budget, the government has set a series of rolling two-year deficit targets. The budget presented in February 1995, which cut \$25 billion in spending over three years, set targets of \$32.7 billion or 4.2 per cent of GDP for 1995-96, and \$24.3 billion, or 3 per cent of GDP, for 1996-97. These targets will be met, Mr. Martin said, despite an economic slowdown in the first half of 1995 that was more pronounced than expected (interest rates were also lower than forecast).

"Continued deficit reduction is essential," he said "if we are to get interest rates down—interest rates that stand in the way of the creation of jobs." He announced that the deficit for 1997-98 will be brought down further, to approximately \$17 billion, 2 per cent of GDP.

"This means we will have cut last year's deficit by more than half," he said, "and it also means that the debt-to-GDP ratio will be on a downward

track....the government's new borrowing requirements on credit markets (in 1997-98)—which is the way many other governments, (such as) the United States, calculate their deficit—will be less than \$7 billion, i.e., less than one per cent of GDP, the lowest level—in relation to the size of the economy—since 1969.

Mr. Martin said deficit targets will continue to be met using "prudent economic assumptions" and setting aside a substantial contingency reserve.

### Economic Indicators

Mr. Martin told the finance committee that Canada's "economic fundamentals are strong." After shrinking by an annual rate of 0.6 per cent in the second quarter, the economy resumed its expansion in the third, growing by 2.1 per cent. Statistics Canada attributed the rise primarily to increased demand in the United States for Canadian exports, particularly office machines, telecommunications equipment, energy products, consumer goods and business services. Lower domestic interest rates, which have fallen almost 2 points below their peaks in early 1995, have also helped spur economic growth.

After three quarters in 1995, two-way merchandise trade between Canada and the U.S. totalled \$259 billion, an increase of 15 per cent over the same period in 1994.

Mr. Martin said the government is committed to sustaining low inflation. The yearly rate as measured by the Consumer Price Index for Canada peaked at 2.9 per cent in May 1995 and

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fell to 2.4 per cent in October. Labour costs have remained steady, with wage settlements averaging below one per cent in 1995.

Unemployment remains a concern, Mr. Martin told the finance committee. After rising in August, September and October, full-time employment levels fell in November, but because fewer people were looking for work, the unemployment rate remained unchanged at 9.4 per cent.

## EDUCATIONAL EXCHANGE

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the Foundation has awarded 189 fellowships and scholarships to Canadian and American faculty, students and artists. Fellowships of up to \$25,000 for periods of from three to nine months are given to faculty doing research or teaching in the other country, and graduate student scholarships provide \$15,000 for study at institutions in the two countries during a nine-month academic year. Scholarships are also awarded to graduating university seniors for post-graduate work at the Master's level, and scholarships and fellowships are given to performing and visual artists. Beginning in 1996-97, awards will be offered to journalists and legislators.

The Foundation also co-sponsors two lectures a year and has entered into partnerships with the University of Toronto and the University of Calgary for Fulbright visiting chairs.

For more information, contact: The Foundation for Educational Exchange between Canada and the U.S.A., 350 Albert Street, Suite 2015, Ottawa, Ontario, Canada K1R 1A4  
Tel: (613)237-5366  
Fax: (613)237-2029  
Internet: [av551@freenet.carleton.ca](mailto:av551@freenet.carleton.ca)

## Canada

### CANADA QUARTERLY

Canadian Embassy  
501 Pennsylvania Avenue, N.W.  
Washington, D.C. 20001  
Tel.: (202) 682-1740  
Fax: (202) 682-7791

Edited by Judith Webster  
Designed by Sharon Musikar

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