The Death of Deference: National Policy-Making in the Aftermath of the Meech Lake and Charlottetown Accords

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It has been suggested that there has been a decline in Canadians’ traditional deference to elites in recent decades, and that the *Canadian Charter of Rights and Freedoms* (the *Charter*) is either a reflection of the decline in deference or a cause of it.\(^1\) Deference, however, seems not merely in decline; it is not “pining for the fjords”, as Monty Python would put it, but is “pushing up the daisies”. It is dead; it was a lingering death, one which lasted between June 1987 and June 1990, and the deathbed was the Meech Lake Accord. To take the analogy further, deference’s funeral procession was the long, slow and, for many of the participants, painful march to the Charlottetown Accord; its burial was the defeat of that Accord in the October 1992 referendum. The implications of this death remain with us still, even if they are but poorly integrated into the practice of intergovernmental relations in Canada, and require a fundamental and more pluralist reconception of the norms of national policy-making.

To understand the cause of the death of deference, one needs to return to the events leading up to the adoption of the *Charter* in 1982. While the story of the 1982 constitutional amendment is often told as an intergovernmental war story, the public also played a formal and influential role in the course of those events. One must understand the impact that equity groups had on the substance of the *Charter*, through their advocacy in the Parliamentary Committee on the Constitution in the winter of 1980-81,\(^2\) and the sense of empowerment and attachment to the 1982 Constitution, as a statement of fundamental human values, that was a consequence of these events.

This newfound connection to the Constitution was not confined to some elite group of Ottawa-based social advocates, though. The negotiation of the 1982 constitutional amendments, and particularly the creation of the *Charter*, was gripping for the general public, too (even for a

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1 See, *Globe and Mail*, 6 December 2003
Canadian teenager, though possibly one with a higher than average interest in politics). With the patriation of the Constitution and the entrenchment of the *Charter*, Canadians were able to conceive of their Constitution as a culturally significant document, rather than a somewhat esoteric guide to the allocation of governmental authority.

Then-Prime Minister Brian Mulroney, with his desire to bring Quebec into the constitutional family “with honour and respect” and his apparent anger at former Prime Minister Pierre Trudeau for the dishonour he imposed on Quebec, failed to understand how profound a change in our processes of political accommodation the 1982 patriation had created. Thus, he returned to the familiar model that had served the country well, and had served him well in his previous career as a labour lawyer, when he launched the rapid, closed-door intergovernmental process to negotiate the Meech Lake Accord in 1987.

There were really two separate critiques of the Meech Lake style of intergovernmental decision-making that combined to kill our deference. One critique was a democratic one; this was a critique of executive federalism itself, which posed a challenge to governments to find more open, democratic, and deliberative (one might even say republican) ways of making constitutive decisions. The other was less a fundamental challenge to the processes of intergovernmental negotiation than a challenge to the inadequacy of our conception of who had a legitimate place in those negotiations; this challenge came most forcefully from territorial governments and Aboriginal peoples, though it was also heard from key interest group representatives. Eventually, this critique, and the more fundamental democratic critique of executive federalism, became joined in the public’s mind to destroy the legitimacy of the Meech Lake Accord and the process of executive federalism by which it was created.

It is likely that neither Mulroney nor the other First Ministers ever thought much about the impact that either of these critiques could have on constitution-making and executive
federalism when they sat down together at Meech Lake in April 1987. With the patriation of the Constitution only five years in the past, public attitudes were in flux and there had not been much opportunity to test the public’s level of deference to the traditional, elite accommodation mode of intergovernmental negotiations. As they found out, though, the First Ministers misread public attitudes at their peril. The short time-frame in which the Meech Lake negotiations were completed and the unwillingness of the First Ministers to alter the Accord in response to public debate, except in the case of “egregious errors”\(^3\), locked the First Ministers into a clash with the public which not only made the defeat of the Accord inevitable, but dealt a death-blow to the public’s willingness to defer to their elected leaders. Indeed, even the Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord (the Tremblay-Speyer Committee) suggested that legislators and the public be encouraged to participate in the process of constitutional change before, not after, First Ministers make decisions.\(^4\) Senator Lowell Murray, the federal Minister of State for Federal-Provincial Relations, likely summed up all that the public saw as wrong with intergovernmental politics when he told the Tremblay-Speyer Committee that the Meech Lake Accord was a “seamless web” that could not be changed.\(^5\)

The image of “eleven white men in suits negotiating behind closed doors”, as the First Ministers’ negotiations were often described at the time, and the potential for the deal so negotiated to substantively affect Charter jurisprudence led to intense opposition to the Accord, especially once the iconic figure of Pierre Trudeau returned to the public spotlight to oppose it.

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\(^3\) See The Report of the Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord (Ottawa: House of Commons, 1987), at pp. 131-132. As noted by Mollie Dunsmuir in the Library of Parliament Backgrounder BP-406, Constitutional Activity from Patriation to Charlottetown (1980-1992), once the Government of Quebec passed a resolution adopting the Meech Lake Accord, it became virtually impossible to change the Accord even in the face of “egregious errors”.


\(^5\) Ibid., at 132.
The battle between Trudeau’s liberal democratic vision and Mulroney’s tory vision of elite accommodation reflected just how much the public’s deference to political elites had declined in five short years.

If the democratic challenges to the Accord from Trudeau and from equity groups and citizens committed to a liberal democratic vision of our constitutional politics (and the symbol of this vision, the Charter) was not enough, the Meech Lake Accord was also assaulted by those who saw their evolving governance projects as being under attack by the First Ministers. Territorial governments, which had evolved into fully self-governing constituent parts of the federation with a substantial measure of the powers the provinces exercised, had been ignored, treated as though they were still merely an administrative unit of the federal government. Worse, their aspirations to someday become provinces, which were particularly strong in the Yukon, were effectively made unachievable by the Accord, which proposed to subject the creation of new provinces to the concurrence of all existing provinces (in contrast to the situation for all provinces that had been created before 1982, when ordinary federal legislation was all that was required). This led to such an intense critique of the Accord in the Yukon that the Yukon government challenged the Accord in court and the Yukon Progressive Conservative Party changed its name to the Yukon Party and severed all ties to the federal Progressive Conservative Party.

Aboriginal peoples similarly saw the Meech Lake Accord as deeply offensive to their aspirations to become self-governing. They also considered their exclusion from the Accord negotiations an insult, coming as those discussions did within weeks of the failure of the last of the three constitutionally mandated First Ministers’ Conferences on Aboriginal Constitutional

\textsuperscript{6} Constitution Amendment, 1987, section 9.
Matters to make any progress in responding to Aboriginal peoples' aspirations. The opposition to the Accord, and to Aboriginal peoples’ exclusion from the Accord negotiations, generated a wave of public sympathy for Aboriginal peoples, who became personified by the Chief of the Assembly of First Nations, Ovide Mercredi, that further undermined public support for the Accord.

What may be most instructive in understanding what the defeat of the Meech Lake Accord says about national policy-making today is how important a role democratic processes played in both the efforts to save the Accord in 1990 and in its ultimate defeat. First, the New Brunswick government introduced a “companion resolution” in its Legislature on March 21, 1990. This was an attempt by Premier Frank McKenna to respond to the harshest public critiques of the Meech Lake Accord, but it was also an admission that a constitutional text that could not garner public support was, in a democratic society, a flawed document. In an effort to save the Accord, the federal government launched the Special Committee to Study the Proposed Companion Resolution to the Meech Lake Accord (the Charest Committee) on March 27, 1990, a Parliamentary Committee designed to seek public input on the companion resolution, and then initiated last-ditch intergovernmental negotiations. Most importantly, though, New Brunswick, Newfoundland, and Manitoba, the three

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10 See The Report of the Special Committee to Study the Proposed Companion Resolution to the Meech Lake Accord (Ottawa: House of Commons, 1990), pp. 69-71 for the complete text of the New Brunswick Companion Resolution.
provinces that held up approval of the Accord, all did so principally on the basis of a democratic critique. Each province demanded more time to engage its Legislature in a public hearing process. In Manitoba, the refusal of Elijah Harper, an Aboriginal Member of the Legislative Assembly, to agree to changing the rules of the Manitoba Legislative Assembly to allow for Manitoba’s approval of the Accord by the three-year deadline made unanimous approval of the Accord impossible.\(^{11}\) As well, Harper’s opposition to the Accord in the Manitoba Legislature provided another linkage for the public between the democratic and Aboriginal self-government critiques. After Manitoba’s Legislature adjourned on June 22 without approving the Accord, Newfoundland Premier Clyde Wells cancelled the proposed free vote on the Accord in the Newfoundland Legislature and adjourned the Newfoundland Legislature as well.\(^{12}\) On June 23, 1990, time ran out for the Meech Lake Accord, for the proposed “companion resolution”, and for intergovernmental politics as historically practised.

The aftermath of the defeat of the Meech Lake Accord was a period of radical experimentation in public engagement. Looking at it at the time, one could have been tempted to believe that the politicians had learned a lesson of the Meech Lake Accord’s death. Between June 1990 and March 1992, Canadians were consulted through the Citizens Forum on Canada’s Future, two Parliamentary committees, and six “Renewal of Canada” conferences. While the Citizens Forum on Canada’s Future (the Spicer Commission) was sometimes cynically derided at the time as a “national group therapy session”, it was a remarkable process, both because of its wide-ranging agenda and its experimentation with new information and communications technologies, as a way to bring citizens from diverse locations and with diverse perspectives together in “virtual town hall meetings.” The first of the two Parliamentary committees, the


\(^{12}\) Ibid.
Committee on the Process for Amending the Constitution (the Beaudoin-Edwards Committee) was also given a wide-ranging mandate to consult the public not merely on the formal constitutional amending formula, but also on the broader question of what processes should be used to ensure that proposed amendments reflect the democratic will. It was this discussion that provided the federal New Democratic Party with the opportunity to advocate a constituent assembly as a more democratically legitimate way to generate constitutional amendment proposals, something which Newfoundland Premier Wells was also advocating and which, in turn, laid the groundwork for the “Renewal of Canada” conferences.

The six “Renewal of Canada” conferences were the highlight of this period, even though they largely came about by accident. When the Parliamentary Committee on a Renewed Canada (initially known as Castonguay-Dobbie and later, after Senator Claude Castonguay’s resignation, Beaudoin-Dobbie), which was itself supposed to include a significant public outreach component, collapsed in November 1991 amid mismanagement and the blatant patronage of its co-Chair, Dorothy Dobbie, efforts began immediately to resurrect it. The Opposition parties initially demanded Ms. Dobbie’s removal, as the person responsible for the fiascos that had led to the committee’s collapse. When, in the aftermath of a public statement by then-Leader of the Opposition, Jean Chrétien, that she had to be removed, the government refused to fire Ms. Dobbie, the New Democratic Party looked to their call for a constituent assembly in their Beaudoin-Edwards minority report for a solution to the impasse. The NDP felt that, at a minimum, the work of the Parliamentary Committee had to be supplemented by a new, more legitimate process that was separate from the Parliamentary Committee and, thus, not tainted by its history of patronage and mismanagement. In the end, the federal government agreed to the NDP’s demand to undertake a series of miniature constituent assemblies in which members of
the public would participate in constitutional reform discussions along with government officials, interest group representatives, and members of the Parliamentary Committee.

These conferences were truly remarkable events. The members of the public who participated were listened to closely and, thus, wielded influence well beyond their numbers; the participants proved that citizens were capable of discussing issues intelligently and could come to a considered resolution of difficult conflicts if they were provided with the right forum. The conferences also had a significant influence on the content of the Beaudoin-Dobbie Report. The best example of this was likely the conference in Montreal.\(^{13}\) This was to be a conference to discuss the Canadian economic union, but interest group representatives and the members of the public who were participating in the conferences had developed an attraction to the social covenant proposal of the Ontario government and the federal NDP. By insisting that the social covenant was, in effect, the other half of our political union and that it be given at least equal time with the economic union, not only did the “non-elite” representatives at the conference turn the event into a discussion of the social union (the term we more commonly use today) but they locked the concept of a social union into the political discourse of the period. One of the final issues to be settled between the NDP and the Progressive Conservatives in writing the Beaudoin-Dobbie Report was the fate of the government’s economic union proposals; the social union was sufficiently secure that the PC’s decided to attach their economic union proposals to it, as a condition for unanimous support of the social union, to save their economic union agenda from oblivion. When it came to the Charlottetown Accord negotiations themselves, the social union and the economic union proposals continued to be linked as a statement of principles.\(^{14}\) This, however, was a far more significant weakening of the federal government’s original economic

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\(^{13}\) The Renewal of Canada Conference: Economic Union, Montreal, January 31 to February 2, 1992.

\(^{14}\) Draft Legal Text: October 9, 1992, section 31.
union proposals than of the Ontario government and Beaudoin-Dobbie Committee’s social union proposals. The roots of this negotiating dynamic can be traced directly back to that weekend in Montreal.

The record of the period leading up to the negotiation of the Charlottetown Accord in the spring and summer of 1992 would suggest that our political elites realized, in the wake of the defeat of the Meech Lake Accord, that serious public engagement had become a mandatory part of constitutional renewal. Yet, as the intergovernmental negotiations that led to the Charlottetown Accord commenced, public engagement was effectively shoved aside, and the Accord began to slowly diverge from the democratic consensus that had begun to be established through the previous processes. At first, the divergence between politicians and the public that they had so carefully courted for the better part of two years was subtle. To their credit, people like the federal Minister for Constitutional Affairs, Joe Clark, and Ontario Premier Bob Rae tried to bring as much transparency as possible to the Charlottetown negotiations. Rae effectively created the Charlottetown process, when Mulroney was planning to take a constitutional reform package directly to a referendum as a way of forcing the Premiers’ hands. Rae also secured the full participation of the four leading national Aboriginal organizations in the negotiations; later, one of these groups, the Native Council of Canada (now the Congress of Aboriginal Peoples) invited some equity group representatives to take part in the negotiations as part of their delegation, to the consternation of most government officials. The two territorial governments (as there then were) were also given seats at the negotiating table in belated recognition of their status as part of the federation. Even with these additions to the negotiating table, though, the Charlottetown negotiations were challenged in court by the Native Women’s Association of
Canada for the under-inclusiveness of their participation. While the Native Women’s Association eventually lost its case, its challenge was taken seriously and sent a ripple of concern through the negotiating rooms.

Joe Clark, for his part, was committed to keeping the public informed about the progress of the negotiations, through daily press conferences by all the Ministers involved in the negotiations. When the negotiations were passed from Ministers to First Ministers, though, even these efforts at transparency were shoved aside, as were the territorial Premiers and Aboriginal leaders initially, in favour of another Meech-like process of quick, brokerage-style negotiations. As a consequence, the public’s lack of trust in, and deference to, political accommodations was an overarching theme in the criticism of the Charlottetown Accord during the fall 1992 referendum campaign. Indeed, the demand for legal text and the assertions that the lack of such text was proof that the First Ministers were trying to hide something from the public (even though, once it was produced, the legal text was likely rarely read) is a prime example of the huge role distrust played in the referendum campaign and ultimate defeat of the Charlottetown Accord in October 1992.

How did politicians become so disconnected from the public they were supposed to represent? And why, in intergovernmental relations, does it keep happening, creating gaps to this day between the rhetoric of commitment to public engagement, such as that in the Social Union

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Framework Agreement\textsuperscript{16}, and the actions of governments in making national policy? Writing soon after the defeat of the Charlottetown Accord, Susan Delacourt claimed that the style of the negotiations demonstrated a mutual, and destructive, lack of respect between politicians and the public.\textsuperscript{17} There is much merit to this claim but, even moreso, Meech and Charlottetown are about the strength of familiarity and faith in shared norms of behaviour.

Because of the structure of the pre-1982 Constitution, constitutional theory and politics in Canada focussed on the allocation of powers between governments. Occasionally, human rights issues were addressed in constitutional law (as was the case with the Senate Persons reference\textsuperscript{18} and local prohibition case\textsuperscript{19}) but this was rare. Governments came to understand the rules of the game of federal-provincial politics and bureaucrats in the field developed long-standing relationships and shared norms of behaviour. The public, Aboriginal peoples, and territories, which were suddenly part of our constitutional politics and part of intergovernmental politics more generally, were unfamiliar to the established players in Canadian intergovernmental politics. The new players did not feel bound by the rules of the intergovernmental relations game, as they had no role in establishing those rules, and they lacked the long-standing relationships with others who had conflicting opinions, which were so much a part of the professional ethos of intergovernmental bureaucrats and had greased the wheels of intergovernmental politics. Governments failed, and too often fail still, to understand that, with new actors in our national political discourse, whether they are territorial governments and Aboriginal peoples at the intergovernmental negotiating table or a much more attentive and

\textsuperscript{16} A Framework to Improve the Social Union for Canadians: An Agreement Between the Government of Canada and the Governments of the Provinces and Territories, February 4, 1999
\textsuperscript{17} Susan Delacourt, \textit{United We Fall: In Search of a New Canada} (Toronto: Penguin Books, 1994).
\textsuperscript{19} A.G. Ontario v. A.G. Canada (Local Prohibitions), [1896] A.C. 348 (P.C.)
astute public, their old, familiar ways had to either obtain democratic legitimacy from the new actors or change into something that could gain such legitimacy.

The events of this period hold important lessons for managing the federation today. The clearest lesson is that the public cares, possibly more than ever, about intergovernmental affairs and its effect on national policies. Canadians are not prepared to trust their politicians to decide on their behalf what constitutes good national policy; deference is dead and its resurrection seems unlikely. The second lesson is that Canadians are quite capable of making the accommodations of differences that are so much a part of the intergovernmental bureaucratic machine, if they are trusted and engaged by governments in the right fora and with enough time to come to understand what, for the intergovernmental relations community, has become second nature. This is the lesson of the Renewal of Canada conferences. Canada is not the sum of its governments, but is, instead, a democratic polity that actually cares about the “big issues” of national policy and cares about finding the answer that will promote the legitimacy and integrity of our nation.

Some governments have shown a real interest in new ways of making constitutive decisions; British Columbia, with its constituent assembly on electoral reform\(^\text{20}\), is an excellent example, as was the Romanow Commission’s effort at transparency and public engagement.\(^\text{21}\) But, on the whole, intergovernmental relations is still largely a “closed shop” of bureaucrats and politicians. In designing new mechanisms to make the governance of our federation more legitimate, governments must accept that legitimacy in a democratic society requires the public to have a role in shaping both the terms of the debate and the results.

\(^{20}\) The British Columbia Citizens’ Assembly on Electoral Reform.
\(^{21}\) The Commission on the Future of Health Care in Canada.
Further, those who get to define who gets access to intergovernmental negotiations, that is, the federal and provincial governments, should remember the other lesson of the Meech Lake/Charlottetown period. The “junior governments”, both territorial governments and national Aboriginal organizations, have a valid claim to be at the intergovernmental table; they are, after all, representative bodies of polities with either a substantial degree of self-government today or an unassailable claim to a substantial degree of self-government in the future (and hopefully the near future). The territories and the national Aboriginal organizations also proved in the Charlottetown process that they can contribute responsibly to the conduct of intergovernmental relations and that they bring important perspectives to intergovernmental negotiations. These governments deserve to be more than simply consulted, but actually to be full partners in the federation; they certainly cannot be ignored.

In the end, to come back to where this commentary began, deference, like Monty Python’s parrot, is dead; the world of constitution-making, and intergovernmental decision-making generally, is a more democratic and pluralist world than in the decades prior to 1982. If this fact is ignored, the legitimacy of intergovernmental relations and federal governance will die too. The fates of the Meech Lake and Charlottetown Accords continue to be reminders of this reality.
Appendix 1:

Backgrounder -- Quebec's Five Conditions and the Meech Lake Accord

The Meech Lake Accord was built around five demands by the Liberal government of Quebec, which was elected in December 1985. These demands were first articulated by the Quebec Minister of Intergovernmental Affairs, Gil Rémillard, at a conference held at Mont Gabriel, Quebec on May 9, 1986. His speech included the following statement:

On 2 December 1985, the population of Quebec clearly gave us a mandate to carry out our electoral program, which sets out the main conditions that could lead Quebec to adhere to the Constitution Act of 1982.

These conditions are:

1. Explicit recognition of Quebec as a distinct society;
2. Guarantee of increased powers in matters of immigration;
3. Limitation of the federal spending power;
4. Recognition of a right of veto;
5. Quebec's participation in appointing judges to the Supreme Court of Canada.

(source: Peter M. Leslie, Rebuilding the Relationship: Quebec and Its Confederation Partners (Kingston: Institute of Intergovernmental Relations, 1987), p. 42.)

In the wake of this statement, the communiqué for the August 1986 Annual Premiers’ Conference in Edmonton stated that, “The Premiers unanimously agreed that their top constitutional priority is to embark immediately upon a federal-provincial process, using Quebec’s five proposals as a basis for discussion, to bring about Quebec’s full and active participation in the Canadian Federation.” (source: Mollie Dunsmuir, Constitutional Activity From Patriation to Charlottetown (1980-1992), Library of Parliament Backgrounder BP406, November 1995.)

On April 30, 1987 the First Ministers met at Meech Lake, Quebec and agreed on a draft document addressing Quebec’s five conditions, which was then turned into legal language and approved by the First Ministers in a meeting in Ottawa on June 2 and 3, 1987. The key, and
ultimately most controversial, provision of the Meech Lake Accord was the recognition of Quebec as a distinct society and the affirmation of the role of the Legislature and Government of Quebec to preserve and promote the distinct society. The complete legal provision stated:

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

“2. (1) The Constitution of Canada shall be interpreted in a manner consistent with

a) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

b) the recognition that Quebec constitutes within Canada a distinct society.

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(a) is affirmed.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language.” (source: Government of Canada, *Strengthening the Canadian Federation: The Constitution Amendment, 1987* (Ottawa: Government of Canada, 1987).)

The Accord would also have committed the Government of Canada to negotiate immigration agreements with the provinces and would have protected those agreements from unilateral federal amendment (Constitution Amendment, 1987, section 3), limited the federal spending power by providing compensation to provinces that opted out of shared-cost programs (section 7), provided Quebec, and all other provinces, a veto over constitutional amendments relating to central institutions and the extension of provinces into the territories or the creation of new provinces (section 9), and guaranteed that three Justices of the Supreme Court of Canada would be from the Quebec bar and that the Justices would be appointed from among names
submitted either by Quebec, in the case of “its” three Justices, or another province, in the case of the other six Justices (section 6). All of these, along with the distinct society provision, were designed to respond to Quebec’s five conditions. The Accord also provided for provincial nomination of Senators (section 2) and First Ministers’ Conferences on the Economy and the Constitution (sections 8, 13).
Appendix 2

Backgrounder – The Charlottetown Accord: Meech Plus or Meech Minus

The Charlottetown Accord, which was the result of the “Canada Round” of constitutional negotiations (to contrast them with the “Quebec Round” of negotiations which led to the Meech Lake Accord) was a much more extensive package of constitutional reforms than had been the Meech Lake Accord. Charlottetown included provisions on reform of the Senate (sections 4, 20), demanded by the West, and the House of Commons (section 5, 19); provisions to allow for the creation of new provinces out of the territories by the federal government (section 21), demanded by the territories; provisions clarifying the division of powers on such matters as labour market training, culture, and telecommunications (sections 9 to 11); provisions to strengthen the constitutional guarantee of equalization payments (section 30), demanded by Atlantic Canada; provisions protecting Métis lands (section 23); and a radical set of provisions on First Nations self-government (section 29), the likes of which have not been seen in any self-government agreement since. (source: Draft Legal Text, October 9, 1992.)

The focus of debate in Quebec, though, was how the Charlottetown Accord addressed Quebec's five conditions in comparison to the Meech Lake Accord. This was often spoken of as whether Charlottetown was “Meech plus or Meech minus”. The all-important distinct society provision was the focus of much of this debate. While the role of the Legislature and Government of Quebec to preserve and promote Quebec's distinct society continued to be affirmed, this provision was contained in a much longer section than the Meech Lake provision and included some wording revisions. The Charlottetown Accord provision stated:

1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 1 thereof, the following section:
“2. (1) The Constitution of Canada, including the Canadian Charter of Rights and Freedoms, shall be interpreted in a manner consistent with the following fundamental characteristics:

a) Canada is a democracy committed to a parliamentary and federal system of government and to the rule of law;

b) the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their languages, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of three orders of government in Canada;

c) Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition;

d) Canadians and their governments are committed to the vitality and development of official language minority communities throughout Canada;

e) Canadians are committed to racial and ethnic equality in a society that includes citizens from many lands who have contributed, and continue to contribute, to the building of a strong Canada that reflects its cultural and racial diversity;

f) Canadians are committed to a respect for individual and collective human rights and freedoms of all people;

g) Canadians are committed to the equality of female and male persons; and

h) Canadians confirm the principle of the equality of the provinces at the same time as recognizing their diverse characteristics.

2) The role of the legislature and Government of Quebec to preserve and promote the distinct society of Quebec is affirmed.

3) Nothing in this sections derogates from the powers, rights or privileges of the Parliament or Government of Canada, or of the legislatures or governments of the provinces, or of the legislative bodies or governments of the Aboriginal peoples of Canada, including any powers, rights or privileges relating to language.

4) For greater certainty, nothing in this section abrogates or derogates from the aboriginal and treaty rights of the Aboriginal peoples of Canada.”

As neither the Meech Lake or Charlottetown Accords ever became part of the Constitution, it is impossible to determine whether this Charlottetown provision, with its more specific reference to what was included in Quebec’s distinct society and its specific reference to the Charter of Rights in the opening words of the section, would have affected the courts’
interpretation of Quebec’s powers to preserve and promote its distinct society. The provision was designed, however, to reflect the conventional wisdom about how the courts would have interpreted the Meech Lake provision and place it in a broader context that was more fully reflective of Canadian society, thereby being “Meech plus”.

The Charlottetown provision on immigration agreements (section 12) was almost identical to the Meech Lake provision, except that provinces were to be guaranteed equality of treatment with any other province that already had an agreement, as the other provinces were concerned about the federal government making an agreement with Quebec on terms that would then be denied them. It is debatable whether this clause weakened the Charlottetown provision compared to the Meech Lake one, but, as the protection of agreements was identical to that in Meech, it seems difficult to claim this provision was “Meech minus”.

The limitation of the federal spending power, on the other hand, is clearly “Meech plus”. It placed much stricter conditions on the federal government's ability to spend monies in areas of provincial jurisdiction in the absence of intergovernmental agreements, provided provinces with the authority to force the federal government's withdrawal from spending in a number of areas of provincial jurisdiction, and made unilateral federal revocation of an intergovernmental agreement impossible, as well as providing for compensation for provinces that opted out of shared-cost programs, as in the Meech Lake Accord (sections 11, 16, 17). The Charlottetown Accord also committed governments to negotiating a framework to govern and limit federal expenditures in areas of provincial jurisdiction (section 31). This concept would reappear seven years later in the Social Union Framework Agreement.

The Charlottetown provisions on the appointment of judges to the Supreme Court of Canada were also largely unchanged from the Meech Lake Accord, though there was a requirement that provinces submit at least five names and that, where there was a vacancy for
more than 90 days, the Chief Justice could appoint an interim judge (section 15). These provisions were designed to avoid the possibility of the Supreme Court being disrupted either if Quebec refused to submit any names or the federal government refused to appoint any of the names submitted by Quebec. Again, as the right of Quebec to provide names and the requirement that the federal government appoint a Justice from among the names submitted was preserved, it would seem difficult to argue that this provision was “Meech minus”.

The only clear case of Charlottetown being “Meech minus” was in the removal of constitutional amendments to create new provinces from the list of constitutional amendments that required unanimity (sections 21, 32). As changes to central institutions would still have required the unanimous consent of the provinces (section 32), as in the Meech Lake Accord, this diminution of Quebec’s veto was not a significant retreat from the Meech provisions.
**About the Author**

Ian Peach has been with the Government of Saskatchewan for nine years, and has been Director of Constitutional Relations in the Department of Intergovernmental and Aboriginal Affairs and, for the five and one-half years before coming to SIPP, a Senior Policy Advisor in the Cabinet Planning Unit of Executive Council. In his fifteen years of government service, Mr. Peach has been involved in numerous intergovernmental negotiations, including the Charlottetown Accord, the Social Union Framework Agreement, First Nation self-government agreements, and the Canada-Saskatchewan Northern Development Accord. He has also been involved in developing Saskatchewan’s policies on a broad range of issues, including Saskatchewan’s argument before the Supreme Court of Canada in the Quebec Secession Reference and key cross-government strategies to address the socio-economic disparity of Aboriginal people in Saskatchewan and northern economic development. Throughout, Mr. Peach has been a keen observer of the policy development process. Born in Halifax, N.S., Mr. Peach holds a Bachelor of Arts from Dalhousie University and a Bachelor of Laws from Queen’s University.
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