Canada: Federal government to change rules on Quebec secession

Keith Jones
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In the face of widespread opposition among Canada's political elite, Prime Minister Jean Chretien has announced his Liberal government will soon take action to lay out the procedure Quebec would have to follow to legally secede from Canada. Speaking last week, Chretien declared, “It has to be done so that they will know, everybody will know, that to have a negotiation [on secession], we have to follow the advice of the Supreme Court.”

Last year, Canada's Supreme Court ruled that a unilateral declaration of independence by Quebec would be illegal under the Canadian constitution and international law. At the same time, it said that the Canadian federal government and Canada's nine other provinces would be legally obligated to negotiate the terms of secession if a “clear majority” of Quebecers voted in favor of separation in a provincial referendum with a “clear question.”

Chretien's cabinet is currently debating what form the federal government's rewriting of the “rules of the game” on secession should take—a simple statement from the Prime Minister, a parliamentary resolution or the adoption of a law on secession. According to press reports, Chretien himself strongly favors legislation. A draft bill stipulating the conditions that would have to be met before the federal government would negotiate secession with Quebec or any other province and outlining the subjects to negotiated is said to have been presented to cabinet for discussion.

Apparently the draft law uses the same language as the Supreme Court in insisting upon a “clear question” and a “clear majority,” while providing no definition of either. Since the 1995 Quebec referendum, in which the supporters of Quebec's secession fell just 50,000 votes short of a majority, Chretien has repeatedly said that a bare majority would be insufficient to trigger negotiations on secession. Without committing to any specific figure, Chretien and his Intergovernmental Affairs Minister, Stephane Dion, have frequently suggested that 60 percent would be a more reasonable benchmark.

The draft legislation reportedly also incorporates the Supreme Court's stipulation that negotiations on secession would have to involve a host of questions—many of them highly contentious—including the division of Canada's more than $600 billion federal debt, minority rights, and Quebec's borders.

Quebec nationalists, including the main federalist provincial party in Quebec, the Parti Libéral du Québec (PLQ), have long held that Quebec's borders are inviolable. But since 1995, Chretien, Dion, and many of the Liberals' federalist opponents, including the Official Opposition Reform Party, have said that if Canada is divisible so is Quebec. The threat to partition Quebec is aimed at the very heart of the Quebec *indépendentiste* project, since it targets Quebec's north, which has a sparse, majority aboriginal population but produces most of Quebec's abundant hydro-electrical power, and western Quebec, where anglophones and immigrants constitute large minorities, and where Montreal, Quebec's metropolis, is situated.

In 1980 and 1995, Parti Québécois (PQ) provincial governments held referendums seeking a popular mandate to negotiate a new partnership with the rest of Canada based on the recognition of Quebec as an independent state. The Canadian government, federal cabinet ministers and Quebec federalists participated in both referendum campaigns, thus lending them legitimacy as expressions of the popular will, even while arguing that the process was flawed. Like Prime Minister Pierre Trudeau in 1980, Chretien termed the 1995 referendum question duplicitous because it asked Quebecers to authorize negotiations between Quebec and Canada on the creation of a new, state-to-state federation, not Quebec's separation from Canada. And both Trudeau and Chretien said that a bare majority “Yes” vote would not and could not compel them to negotiate the “break up” of the country.

Still, Chretien calculated in 1995, as Trudeau had in 1980, that the federalists could beat the PQ on its own terms, and that to make a challenge to the legitimacy of the PQ's referendum process the pivot of the federalist campaign against secession would enable the PQ to seize the moral high ground—to claim that the federalists were fearful of and not ready to recognize Quebecers' “democratic will” and “right-to-self-determination.”

But the near-loss of the 1995 referendum staggered Chretien and his advisors and caused them to outline a new “hardline” strategy against Quebec secession. Plan B centers on the economic and political costs to Quebec of withdrawing from the Canadian federal state. For decades partition had been dismissed as a quack theory of the ultra-right, but following the October 1995 referendum Chretien and Dion suggested it was a very real possibility should Quebec secede.

As part of its new hardline strategy, the federal Liberal government petitioned Canada's Supreme Court in September 1996 to rule on the constitutionality of secession. Recognizing that the federal government was trying to rewrite the rules of the game so as to reduce the significance of, if not delegitimize, a future majority referendum vote in favor of Quebec “sovereignty” of independence, the PQ government and its supporters refused to

participate in Supreme Court case on secession.

In their unanimous August 1998 ruling, the nine Supreme Court justices supported key aspects of the federal government's Plan B: under Canadian and international law a unilateral declaration of independence is illegal no matter the size of a referendum majority in favor of separation; Quebec's borders would have to be the subject of negotiation in the event of secession and such negotiations would have to take into account the Canadian government's legal obligations to Canada's aboriginal peoples and Quebec's other minorities.

But while introducing new impediments to Quebec's secession, the Supreme Court went beyond the original terms of reference of the federal government and stipulated that the federal government and the other nine provinces have a “binding” constitutional obligation to negotiate secession if a “clear majority” of Quebecers answer yes to a “clear” question authorizing secession.

Its boycott of the case notwithstanding, the PQ proclaimed the Supreme Court judgment a “victory,” because for the first time a key federal institution had stipulated under what conditions Quebec would be allowed to withdraw from the federal state.

Clearly, this was the reaction the judges had both anticipated and wanted. By issuing a “sagacious” judgment that could win approval from both sides, the Court sought to place new obstacles to secession, while simultaneously boosting its legitimacy so as to be able to serve as an “arbiter” in the event the crisis of Canada's federal state reaches the boiling point.

Central to the Court's strategy was to refuse to clearly define its attitude to a host of questions, so as to leave itself and Canada's federalist politicians the maximum room for maneuver in the event of a “yes” vote in favor of secession. Thus the court ruled that the obligation to negotiate secession only has constitutional force if a “clear majority” vote yes in answer to a “clear question,” but it refused to define either a clear majority or a clear question, saying that this should be decided by the politicians. Declared the Supreme Court, “it will be for the political actors to determine what constitutes ‘a clear majority on a clear question' in the circumstances under which a future referendum vote may be taken.”

Chretien's anti-Quebec secession initiative has been widely criticized by the PLQ, Quebec's main federalist provincial party, the Tories, and the other federal opposition parties including Reform, and by most of the press in English Canada and Quebec. It is also widely rumored that most of Chretien's Quebec ministers, including the number two man in the government Finance Minster Paul Martin, don't think he should proceed.

There are two orders of disagreement.

The vast majority of federalist politicians who oppose Chretien's attempt to stipulate the rules of secession do so for tactical reasons. They argue that to quantify the level of support needed to trigger negotiations on separation will strengthen the Quebec separatists: it will allow the PQ to paint the federalists' as anti-democratic and it will tie the hands of a future federal government.

Second, and even more importantly, they point to the crisis in the PQ camp. Support for separation has plummeted in the past four years. There are several reasons for this. The PQ has imposed massive social spending cuts. Despite the PQ's attempts to tailor independence to the needs of big business, there is growing skepticism in the Quebec bourgeoisie about the feasibility of independence under conditions of ever-intensifying world economic integration. Last but not least, the Clinton administration has repeatedly voiced strong support for the maintenance of the Canadian federation. Last month, former Michigan Governor and US Ambassador to Canada James Blanchard said an independent Quebec would not gain automatic entry to the North American Free Trade Agreement. “We would want our extra pound of flesh.”

Given the crisis of the PQ, would it not be better, argue Chretien's federalist opponents, to let sleeping dogs lie.

But there is a second order of disagreement. The PLQ and the dominant faction of the Quebec bourgeoisie are adamantly opposed to Chretien's Plan B, above all to his invocation of the threat of partition. While they oppose secession, they recognize that Quebec would be economically hobbled, if not convulsed by civil war, in the event that the rest of Canada tried to exact partition as the price for Quebec independence.

There has been much press speculation as to why Chretien is so determined to lay down the rules of secession despite strong opposition from federalist circles. Much of this speculation has centered on Chretien's personal motivations; his concern that he not be remembered as the Prime Minister “who almost lost the country.” There is no question Chretien was badly shaken by the events of the fall of 1995. Just days before the 1995 referendum he burst into tears in a cabinet meeting and had to be consoled by his colleagues. A few months after the referendum, he seized a protester by the throat at a demonstration in Quebec.

But behind Chretien's actions lie more than personal considerations. Important section of big business are gravely concerned by the weakening of the federal state, as Canada becomes ever more economically integrated with the US, and by the economic costs of the instability of the Canadian federation. Significantly, Conrad Black's *National Post*, the voice of the most aggressive sections of Canadian big business and otherwise a virulent critic of the Chretien government has hailed the Prime Minister for “defending Canada” against the separatists.

Chretien, for his part, has drawn the connection between his current initiative to strength the federal state with his government's drive to slash social spending so as to eliminate the federal deficit. In both cases, he affirms he was willing to court unpopularity to “strengthen Canada.”