Canadian Federalism: Evolution of Concepts and Values

“(…)Canada has often been called a mosaic, but I prefer the image of a tapestry, with its many threads and colours, its beautiful shapes, its intricate subtlety. If you go behind a tapestry, all you see is a mass of complicated knots. We have tied ourselves in knots, you might say. Too many Canadians only look at the tapestry of Canada that was. But if they would see it as others do, they would see what a beautiful, harmonious thing it really is (…)” (Trudeau, 177).

Since Confederation, the people of the Canadian provinces and territories have created close ties of interdependence based on shared principles that include federalism, democracy, constitutionalism, the rule of law and respect for minorities. These principles, the product of nearly 140 years of evolution, assist in the interpretation of the Canadian constitution and provide a foundation for spheres of jurisdiction, the scope of rights and obligations, and the roles of political institutions. Despite many obstacles, the system has worked quite well since its inception.

In my paper I would like to focus on one of these principles -- federalism. I will present the evolution of concepts and values of Canadian federalism, where the federal and provincial governments have added new threads and knots, and thus modifying the original tapestry. Consequently, the pattern has changed, and new issues have become predominant. The evolution, the process of weaving, still carries on. First, I would like to focus briefly on the origins of the federal system, then I will examine the basic principle of the division of powers. Lastly, I will outline various perspectives on the nature of the federal system from the federal government’s and the provinces’ point of view.
1. Reasons for federalism

The Fathers of Confederation adopted a concept of federalism that was a pragmatic response to the social realities of the day. In the words of Karl Deutsch¹ (Deutsch, 3-9), federalism was “the establishment of an amalgamated security community”. There were institutional, economic, ethnic, linguistic and religious differences among the British colonies that established the union. The United Province of Canada, which later became Ontario and Quebec, was already a federal institution, but one that was divided along ethnic, linguistic and religious lines. The Francophone, mostly Catholic, population inhabited the eastern part, known as Lower Canada. The British ethnic community, which was mainly Protestant, inhabited the western part, known as Upper Canada.

The Maritime colonies constituted quite separate political communities, although they had similar ethnic, linguistic and institutional roots. Life in the Maritimes was different than in the United Province of Canada because of the area’s dependence on the sea. There was lack of communication between the two areas, and few social or commercial ties. The Maritime colonies cooperated and traded with one another, so even they promoted an integrated political unit composed of only the Maritime Provinces (Wagenberg, 13).

Despite similarities like membership in the British Empire and roots of migration, Maritime colonies did not feel secure in joining federation because of the disparity in size and competitive economies. Newfoundland's fears persisted for many years, and the island did not join Confederation for another eighty years. In 1949, Newfoundland’s many inhabitants were opposed to becoming a part of Canada and even today many Newfoundlanders believe the province would be better off if it were not part of the federation. Prince Edward Island also delayed joining.

The colonial economies experienced strong growth in the pre-Confederation period, as measured by revenue, expenditure, imports and exports. All indicators showed that the Province of Canada was dominant. However, with the abrogation of the Reciprocity Treaty² by the United States, the future basis of the economy remained uncertain, and that problem was the driving force behind the Confederation movement. The Canadian colonies had to increase trade with one another other, and through unification abolished duties on their products. “Canada was a political unit that had became amalgamated without necessarily achieving integration” (Wagenberg, 32). It was established for
practical reasons: to avoid invasion and economic collapse. The Intercolonial Railway, the first major project of the union, was supposed to bring the provinces closer together by facilitating the movement of trade and people.

Canadian Confederation emerged because of a unique set of circumstances. The major factor was the political will of several politicians, especially from Upper Canada, who represented the major driving force in the process. Wagenburg et al. concluded that “the union thus far proved to be enduring despite the lasting bonds of political union between distinct societies that may be forged without the achievement of close integration, provided government structures are flexible and adaptable and a common attachment to tolerance and compromise prevails” (Wagenberg, 32). There was fear of an American invasion, which was reinforced by the Fenian Raids. Paragraph 2 of the London Resolutions, defined the framework of the future federal system: “In the Confederation the system of government best adapted to protect the diversified interest of the provinces and secure efficiency, is a General Government charged with matters of common interest to the whole country and Local Government charged with the control of local matters in their respective section…”

Based on the London Resolutions the Canadian Constitution was written. After passing by the British Parliament it came into force on July 1, 1867.

2. The division of powers

From the colonies’ perspective, the most important aspect of Confederation - since the institutions of the British parliamentary system were already established - was the division of powers between the federal and provincial governments, within their assigned spheres of jurisdiction pursuant to the Constitution Act, 1867. The Constitution created the federal state, which was more than the sum of the provinces. The Preamble to the Constitution Act, 1867 states that the provinces are “federally united” to form Canada.

One of the main pillars of the Canadian federal system is the explicit distinction between the legislative powers of the federal Parliament and those of the provincial legislatures. Sections 91 to 95 in Part VI of the Constitution Act, 1867 allocate exclusive powers to both levels. Section 91 assigned 29 kinds of powers to the federal government. The opening paragraph states that: “the federal parliament is to make Laws for the Peace,
Order, and Good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislature of the Provinces”. This clause, known as the residual power clause, gives the federal government power over anything not specifically assigned to the provinces. The federal government may also use the “powers of reservation and disallowance” if there is a conflict of authority. This means that the central government can disallow a provincial statute within one year of passage, or can reserve a provincial statute for federal government review before it goes into force. This power was exercised in the early years of confederation but has not been used since 1943.

The territories also fall under federal jurisdiction. They do not have provincial status and their constitutions are acts of the Canadian Parliament, which control most of public land within their borders.

The federal government is in charge of public debt and borrowing money. Subsection 91(3) grants the federal government the power to raise money by any mode or system of taxation. In addition to raising money through direct taxation, the central government can also raise money by means of other taxes. It regulates trade and commerce, and this is why Ottawa was responsible for negotiating the North American Free Trade Agreement (NAFTA). Postal services, currency, coinage, banking, interest rate determination, paper money issue and savings bonds are also the responsibility of the federal government. Other significant powers include responsibility for criminal law and penitentiaries. The federal government has power over the militia, the military, the navy, and defence in general, and also manages unemployment insurance system implemented in 1940.

The powers assigned to the provinces are listed in sections 92 and 93. Though provinces also have the power of taxation under subsection 92(2): “direct taxation within the province in order to the raising of a revenue for provincial purposes,” the central government’s powers are much greater. Health care falls under provincial jurisdiction, and is the costliest item in provincial budgets. Education is also one of the most important provincial responsibilities, though no provincial statute can change the privileges of denominational schools that existed at the time of Confederation. That protection remains in force in Ontario and Quebec, allowing for the separate school systems. Provincial governments are also responsible for municipalities. The natural resources - “all lands,
mines, minerals, and royalties” - are assigned to the provinces, which are also entrusted with the management and sale of public land belonging to the province as well as timber and wood. However, the federal government may enact laws governing all matters relating to non-renewable natural resources, forest resources and electric power.

For many years, a number of provincial powers, especially powers in the social sphere were considered less significant, but these have now grown in significance. Whenever there is a conflict between a federal and a provincial statute, it is the statute passed by Parliament, the federal legislative assembly, that prevails.

There are also powers shared by both levels of government; these are known as concurrent powers. Both governments may pass laws governing natural resources, education, agriculture and immigration. The new provision added in 1982 enables the provinces to control the export of their natural resources to other provinces, but not abroad. For example, each province has the power to enact laws governing the export of electric power to other parts of Canada, concurrently with federal authority over trade and commerce. The provinces have jurisdiction over schools and post-secondary institutions, but federal intervention is permitted only in very narrow spheres. The changes introduced in 1951 and 1964 added old age pensions and supplementary benefits to the concurrent power list. Section 94A stipulates the authority of the provinces, but allows federal government to legislate in those spheres. Agriculture and immigration fall under provincial jurisdiction when issues are of a provincial nature. When an issue concerns more than one province, the federal government assumes jurisdiction.

The terms of allocation of powers are often vague and imprecise, and this may and does lead to conflicts. Following arguments used by the Supreme Court of the United States in Marbury v. Madison, the Judicial Committee of the Privy Council (JCPC) and the provincial courts assumed the rights to judicial review of legislation passed by the Canadian Parliament and provincial legislatures. Decisions rendered by the courts profoundly affect the distribution of powers between the two levels of governments, without officially amending section 91 or 92 of the Constitution Act.

Since 1949, the Supreme Court of Canada has had ultimate authority in determining whether a particular policy or action falls within federal or provincial jurisdiction. That is one of the reasons why the provinces would like to participate in the process of selecting
Supreme Court judges. So far, appointing a judge to the Supreme Court is the sole prerogative of Prime Minister. This power puts Prime Minister in a conflict of interest position, because the federal government is a litigator before the Supreme Court and provinces fear that they are not properly represented. Even a former Supreme Court justice is in favour of reforming the secretive appointment system for judges.

With the Canadian Charter of Rights and Freedoms, new limits have been placed on both levels of government, and the judiciary’s role in defining the limits of government authority has been strengthened. The Charter imposed fundamental limitations on the exercise of powers at both levels of government. It is interesting to note that the power of the courts in interpreting legislation is growing. For example, the 2003 ruling on same-sex marriage by the Court of Appeal for Ontario, which allows persons other than a man and a woman to marry, indicates that important decisions affecting centuries of legislative development can be rendered simply through the interpretation of the courts. Regardless of whether Canadians support the concept, same-sex marriage should be legalised only by Parliament, the legitimate source of legal innovation.

3. Federal-provincial relations

Federal-provincial relations are not static, and the equilibrium between decentralization and centralization shifts frequently. Peter W. Hogg (Hogg, 167) indicates that the history of federal-provincial relations is one of continuous constitutional adaptation to changing circumstances and values.

In the early years of Confederation, the national government controlled the provinces. Sir John A. Macdonald, the chief architect of Confederation, supported strong central government. Later, the provinces steadily gained power and importance during the eras of H. Mencier and O. Mowat, Ontario and Quebec premiers that saw the provinces as the essential building blocks of Confederation and called for more provincial rights. The JCPC judgements also favoured provincial rights (Cairns, 301-304). The Laurier years were characterized by “a more constructive and harmonious pattern of relations between the federal and provincial government than prevailed in the previous decades” (Smiley, 21). In the 1920s, provinces demanded more power. Movements like Maritime Rights and protest parties in the West indicated that provinces were not happy. The transfer of
control over Western resources to provincial governments did not reduce Western alienation. The Great Depression was followed by the Second World War, after which a new doctrine of state intervention gave the federal government a far more active role. The 1940 Rowell-Sirois Royal Commission Report on Dominion-Provincial Relations highlighted the need to reform the system and give the federal government more responsibilities in social policy and economy. It also proposed a more uniform national tax structure and greater federal assistance to the provinces. Following the report recommendations, the federal government strengthened its position and played a prevailing role in social legislation and economic management. With conditional grant programs in the field of social assistance, health care and education, the federal government stepped into the provincial jurisdictional domain, which was becoming increasingly extensive. Participation in the programs was voluntary, and program implementation was left to provinces, but the provinces were required to impose national standards, such as universal accessibility. Up to the late 1950s, the dominance of the central government was strongly visible.

The evolution of Canadian federalism from the 1960s to the 21st Century has been seen as a search for strong provinces in a strong Canada. Change was gradual, and much of it took place in the constitutional forum through the struggle for changes in the distribution of powers. In the mid 1960s, centralising forces weakened and provinces with their own tax collection systems demanded more power. Many changes were introduced, such as the expansion of provincial jurisdiction to provide more autonomous control over cultural and social policy, the conversion of conditional to unconditional grants, larger equalization payments, more formalized intergovernmental relations, and the right to participate in international relations with respect to matters falling within provincial jurisdiction (Deutsch, 230). The last change allowed provinces to open missions abroad to promote trade and cultural links. Currently, there are around 50 provincial offices abroad, primarily representing Quebec, Ontario, Alberta and British Columbia.

Quebec, which experienced a rapid series of political, social and economic changes collectively known as the Quiet Revolution, was not satisfied with the existing decentralisation process and demanded a greater degree of political autonomy. With modernisation, nationalist beliefs in the idea of a “Free Quebec” emerged. Separatist
parties like the Union for National Independence and Quebec Party gained strong support. Even after violent acts led by the Quebec Liberation Front, the idea of an independent Quebec did not fade away. Quebec’s demands amounted to opening Pandora’s box. Other provinces also sought more power.

From the 1970s to 1984, the provinces had to do battle with a strong centralising force: Pierre Elliot Trudeau. He believed that the best protection for every individual in Canada was the Canadian Charter of Rights and Freedoms, which was entrenched in the Constitution in 1982. His government promoted cooperation with the provinces. The number of federal-provincial committees, boards and agencies grew from 190 in 1968 to 800 in 1975, and the number of federal-provincial conferences (Seymour, 198) increased as well. A special Federal-Provincial Affairs Division of the Privy Council Office was established, later evolving into the Federal-Provincial Relations Office. Similar institutions were also created at the provincial level. The First Ministers’ Conferences, though they had no constitutionally derived source of power, became an important element of policy. The provinces, through a variety of channels, demanded powers in culture, communications, resource taxation and spending. They proposed a list of federal powers they wished to restrict or transfer to the provinces (Chrétien, 288). Quebec went further, requesting guarantees for language and culture. As a result, tax regulations were amended and unconditional grants implemented. After 1980 referendum in Quebec Trudeau called all provincial premiers together to discuss constitutional issues, with the division of powers one of the main topics on the agenda. Trudeau reassessed the constitutional and tax presence of the federal government, but he did not want to give in to more provincial demands: “The devolution of power shouldn’t only go in the direction of the provinces. If we want a strong and united Canada, there are certain powers that should flow in the other direction” (Trudeau, 173).

During negotiations concerning the repatriation of the Canadian Constitution, it became clear that a consensus between the provinces and the federal government would be very difficult to reach. Trudeau argued that all demands should not come from the provinces and all concessions not come from the federal budget. He believed in balance. “Too much state interference is bad; too little is bad. Too much provincial power is bad; too little is bad. You have to look for counterweights all the time” (Trudeau, 168).
After the Supreme Court judgement, Trudeau again sought a broader consensus in support of his plans for constitutional change. All provinces except Quebec reached a compromise. They signed a new constitutional deal which included a formula to amend the constitution, provisions stipulating there would be no compensation for opting out and enshrining the principle of equalization as well as expanding provincial powers over indirect taxation of resources and international trade in resources. One of the most important component of the deal was the Canadian Charter of Rights and Freedoms, which included the notwithstanding clause demanded by the provinces. Quebec Premier René Levesque did not sign the Charter but Quebec was legally bound by it.

During the Mulroney era, the position of provinces was strengthened once again. The First Ministers’ Conferences gained much more political importance. The premiers deeply influenced both the Meech Lake and Charlottetown constitutional accords, which were supposed to allocate them more powers. Because Brian Mulroney’s political victory was strongly based on Quebec’s support, in exchange he promised Quebec more political autonomy and greater security. Quebec was supposed to gain recognition as a “distinct society,” secure a greater role in immigration, have some influence on the Supreme Court of Canada judges’ appointments, and have a veto on constitutional amendments. Quebec also demanded limitations on the federal spending power. The Meech Lake Accord, signed in 1987, included Quebec’s demands as well as other projects like Senate reform, the introduction of proportional representation for provinces in the House of Commons, and the right to opt out of new federal programs in areas of exclusive provincial jurisdiction. Though the Meech Lake Accord, put forward and signed by all eleven first ministers, it was later criticized by many politicians, including Trudeau, who did everything in his power to discredit both it and the Charlottetown Accord. He claimed that: “The duty of the premier of the province is to fight for the good of all people in that province, not just one ethnic group, even if it happen to be majority” (Trudeau, 169-70).

The Accord required three years for formal ratification by the federal parliament and the provincial legislatures. Two provinces failed to ratify it and the Accord lapsed. Up to this very day, there is ongoing debate over the consequences of this failure. The Accord would have had a profound impact on the Canadian federal system by establishing a special status for Quebec within the federation. That status would have interfered with the
principles of a federal state, which protect the equal rights of provinces. Although there was widespread support among Canadians for the Senate and the Supreme Court reforms, concerns have been expressed about the way in which the agreement on major constitutional changes was accomplished. That was one of the reasons why Mulroney was seeking national approval for the next agreement. The process resumed. The Prime Minister and provincials premiers once again reached a consensus on constitutional reforms in Charlottetown in 1992. The new agreement included all major elements of the Meech Lake Accord, as well as new provisions for an elected Senate and Aboriginal self-government. This time, before it was submitted for ratification by the legislatures, the Accord was submitted to a national referendum. It was decisively rejected. Quebec rejected the Charlottetown Accord because there was a prevailing sense that the Accord did not give the province enough power. Other provinces rejected it because there was a sense that Quebec was being given too much power. On the whole, the Accord was rejected not necessarily because Canadians did not like it, but because the Mulroney government was unpopular. Clearly, it seemed the federal government and the provinces were unable to formulate a package of constitutional amendments that satisfied all the parties but it did prove the importance of close cooperation between both levels of governments.

Today as in the past, the federal system faces many challenges as we enter the 21st Century. Some powers assigned to the provinces were of minor importance in 1867, but are no longer minor today. Health care, education and the municipalities have become significant issues, and the provinces cannot deal with them unsupported. The provinces demand more money from the federal government but resist any encroachment into their jurisdictions. Federal budgets must include more spending on health care, education and municipalities, but the federal government would also like to play an active role in these areas. The provinces would like to have some say on matters of federal jurisdiction, such as foreign policy. For example, Alberta would like to participate in negotiations with the US. Some provinces claim that the current system represents only Ontario’s interests, at the expense of the rest of Canada. There is noticeable lower standard of living in the Maritime provinces as well as in Manitoba and Saskatchewan, which rely mainly on wheat production. Alberta, the most westerly of the three Prairie provinces, is seeing its
economy prosper because of oil and natural gas. And Canada’s most westerly province, British Columbia, is also relatively prosperous, with an economy based on trade, natural resources and fishing. Quebec is unhappy with Canada than any other province, but this is because of Quebecers’ nationalism, not their standard of living. One-third of Quebecers still believe that the only way to preserve Quebec’s French culture is separation. Frustration with the federal system is also visible in Western Canada. Though Western provinces are not necessarily seeking independence, they want a greater role in the federal decision-making process. They feel that the federal government is too focused on Quebec at the expense of other important national issues, and does not address western discontent. The federal government has difficulty in dealing effectively with the individual interest of the provinces. Whenever it makes a decision favouring one party, it risks alienating the other parties. “The sponsorship scandal” which allocated funds to Quebec only to promote unity was criticised by other provinces.

4. Concepts of Canadian federalism

Edwin, R. Black (Black, 225) differentiated five concepts of Canadian federalism: centralist, administrative, coordinate, compact and dualist, which had been present at particular times. Howard Cody (Cody, 55-83) identified four eras: Confederation Era -1867-83; Dual Federalism Era - 1883-1910; Cooperative Federalism - 1910-1960; and Executive Federalism -1960 to the present in the evolution of Canadian federalism, which indicated swings of centralization and peripheralization. Both authors showed a similar pattern in the evolution of federal-provincial relations.

The centralist idea promotes the concentration of financial, fiscal and other economic powers in the central government, which should be supreme over all other governments. This concept was present during Confederation Era as well during the Great Depression and up to the 1950s. The most important way in which the federal government directly intervened in provincial affairs was through the power of disallowing provincial legislation (Black, 37). Support for centralism grew when the economic depression hit the provinces. It was also visible during the decade following the Second World War. As a general rule, federal systems tend to centralize during military or economic crisis.
The administrative or executive concept emphasizes the necessity of intergovernmental cooperation through joint interprovincial or federal-provincial endeavours. This approach requires joint activities like tax harmonization, conditional and unconditional grant programs, shared-cost programs and equalization grants. Federal-provincial conferences became an important factor in establishing contacts between governments. Although the first conferences were organized at the beginning of the 20th century, they did not lead to cooperation. Gradually the conferences gained importance; Prof. Smiley suggested that the “Federal-Provincial Conference of Prime Ministers and Premiers has come to be the most crucial institution of Canadian federalism” (Smiley, 60).

Although Trudeau supported this kind of federalism, he also feared that the influence of provincial premiers could undermine the legitimacy of Canada’s Parliament. The coordinate concept highlights strong federal and provincial government within their assigned constitutional spheres. Parliament and the provincial legislatures are perceived as having legitimate and independent authority to amend different spheres of the constitution. This concept reflects the legal approach to the federal system illustrated by the classic definition which means a system of government that include a division of powers between general and regional authorities, each of which, in its own sphere, is coordinate with the others and independent of them. Black (Black, 143) argued that the 1960s and early 1970s saw three major developments exemplifying coordinate federalism: tax collection, which frees provinces from federal determination of major tax revenues, tax abatements to carry on federal programs independently, and unconditional grants.

The compact theory asserts that: “the Canadian union has been conceived by some to be a league of states which by solemn compact delegated certain powers to a newly-constituted central government” (Black, 17); that is why they should have stronger position in the federation and power to control central government. This theory asserts that that the agreements upon which the Confederation settlement was based are in the nature of a compact or treaty between the original four provinces. This theory originated during the “provincial revolt” and emphasized their full political independence within their spheres of jurisdiction.
The dualist concept, sometimes called the two nations theory, emphasizes the idea of two nations, two linguistic groups and cultures that founded Canada. This approach articulates the cultural duality of the federation. The theory is set out in the Tremblay Report\textsuperscript{12}, which highlighted Quebec’s distinct character and its role in the federation as one of the two founding partners.

**Conclusion**

The Canadian political system is a work in progress. Federalism, as an important cornerstone of the Canadian Constitution, assigns each of the provinces enough power to protect its culture and distinctiveness. According to Black’s concept of federalism, we see that the executive form of federalism prevails today. Executive federalism is a primary means of settling intergovernmental disputes. The federal-provincial conferences play a very important role in the process of cooperation. The current fiscal mechanisms were developed through the conferences, and these mechanisms allow an ongoing redistribution of powers. The essence of the system is a network of relationships between the executives of the central and regional governments, which have been recently joined by the mayors of large cities. Large cities would also like to participate actively in fiscal federalism and as major contributors to federal and provincial budgets influence the allocation of resources.

So far, though federalism in Canada has proved resilient and adaptable, it has not succeeded in eliminating disintegrative forces. We cannot discount the possibility that one or more provinces may eventually secede from the federation. We have witnessed a push for Quebec separation, and Western alienation. Since the narrow victory for federal forces in the 1995 Quebec referendum, there has been ongoing debate on how to create a strong sense of national citizenship in such a diverse society. The political victory in 2003 of the Liberal Party in Quebec has acted as a brake on the independence movement, but the sovereignist movement could easily regain strength in the future. Canadians outside Quebec see no reason why one of the provinces should be treated differently. For the vast majority of Canadians, Canada is based on the partnership of 10 equal provinces; this means that Quebec, or any other province, for that matter, is not entitled to anything that is not available to all. Some experts even suggest that greater decentralization would
eliminate the disintegrative forces. I see no need for greater decentralization. Federalism
gives the provinces enough power to protect their culture and their distinct institutions.
Fiscal federalism works quite well, and further decentralization could undermine
Canada’s ability to meet the challenges of a global economy. Today, we are seeing
unifying trends in the global economy and in politics, with the formation of large bodies
like the European Union. There has been no major movement toward decentralization in
the United States either. Peter Russell (Russell, 6) argues that, today, Canada must adjust
the roles and responsibilities of governments and harmonize its policies. He points out
that the principle of subsidiarity, as applied in the EU, might be a useful model. Perhaps
the new Conservative Party will succeed in reconciling Western alienation and Quebec’s
aspirations.

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Endnotes:

1 For Deutsch an amalgamated security community implies the formal merger of two or more previously independent units into a single larger unit, with some type of common government after amalgamation.
2 The Reciprocity Treaty with the United States allowed primary product from Canada like lumber or minerals to enter the U.S. duty free. The U.S. congress terminated this agreement in 1866.
3 The Fenian Brotherhood was made up of Irish-Americans who believed that they could free Ireland from Britain by attacking Canada. The government of the United States did not support this movement but the Fenian raids worried Canadians and helped to create political union between colonies.
4 There are some exceptions to these rules.
5 Constitution Act, 1867 sections 56 and 90.
6 Constitution Act, 1867, sections 91A, 93, 94 and 95.
7 In Marbury v. Madison (1803) the Supreme Court of the United States took the authority to settle disputes on the distribution of legislative power.
8 Until 1949, the Judicial Committee of the Privy Council was the ultimate court of appeal for Canada.
9 In “Patrition Reference” - Reference re Resolution to Amend the Constitution [1981] 1 S.C.R 753, the Supreme Court of Canada formed an opinion that a constitutional convention required a substantial degree of provincial consent if the federal government would like to introduce constitutional changes that affect provincial power. It meant that unilateral the federal government position to pursue without the province consent was technically legal but was in violation of constitutional convention.
10 The notwithstanding clause was a major and controversial change to the Charter. It applies to fundamental freedoms, legal rights and equality rights but no opting out from the obligation of government to provide education for French language minorities outside of Quebec and the English language minority in Quebec, nor could there be opting out of the guarantees protecting mobility rights.
11 This figure changes with every public poll, but around 25-30 percent of Quebecers have been in favour of separation since the 1960s.
13 In broad terms, subsidiarity means the investment of authority at the lowest possible level of an institutional hierarchy.