

**Confusing the conditions a province must meet
for it to secede from Canada legally
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Barbara Yaffe's column in the Globe and Mail on March 18 (*Britain should have learned from Quebec's referendum*) perpetuates the general confusion surrounding the 1995 Quebec referendum on unilateral secession. She praises the wisdom demonstrated by Prime Minister Jean Chrétien in his response to the challenge to Canada's existence launched by Premier Jacques Parizeau, who promised a unilateral declaration of independence if the YES vote exceeded 50 per cent.

She writes: "Then prime minister Jean Chrétien controversially advanced the view that a simple majority vote was not enough to take Quebec out of Canada. It was a bold and brave assertion at the time."

But she misses the main point by assuming that some percentage exceeding 50 would authorize Quebec's secession. This contradicts the Supreme Court of Canada's response to the reference on the secession of Quebec. It required that a province, to separate legally, required an amendment to Canada's constitution. That meant the consent of the other provinces.

She writes: "Specifically, the judges stated, only a clear majority responding to a clear question could force a federal government to negotiate provincial secession. Interestingly, the court demurred on specifying what percentage would be necessary to constitute a clear majority."

But the court's reference to "a clear question, a clear majority," was not for a passport to secession, but merely a condition for the democratic principle to come into play. The court declared that, should any province adopt a clear resolution to amend the constitution, Ottawa and all the provinces must meet and confront their positions on modifying the constitution. If they failed to reach a consensus, this would not grant Quebec a right to secession. So, under the current constitution, secession is excluded. To make it permissible, the constitution must be amended. Even then, it would not confer a right to secession, but merely the possibility of secession, with the consent of all the federation's partners.

This was also the position of Pierre Trudeau. On November 15, 1976, when René Lévesque's Parti Québécois had won a majority, Pierre Trudeau spoke to the cameras: "I am confident that Quebecers will continue to reject separatism because they still believe their destiny is linked with an indivisible Canada." The next morning, in the Commons: "I am sure the statement I made last night, and which I would willingly repeat today, is a clear indication that this government is dedicated to an inseparable Canada, a Canada which is indivisible."

Then, on May 14, 1980, six days before René Lévesque's referendum on sovereignty-association, Trudeau spoke in Montreal's Paul Sauvé Arena: "Mr. Lévesque has asked me what my attitude would be if the majority of Quebecers voted Yes. I have already answered this

question... Mr. Lévesque will be welcome to come to Ottawa, where I will receive him politely, as he has always received me in Quebec City, and I will tell him that there are two doors. If you knock on the sovereignty-association door, there are no negotiations possible.”

But Mr. Chrétien, in contrast, never defended the constitutional order. In 1985, after leaving politics, he published his political memoirs, *Straight from the Heart*, in which he made a boast that would come back to haunt him and to haunt Canada:

“At a town meeting in Alma, Quebec, in the early 1970s, a very intelligent Liberal got up and said, “Chrétien, when will you tell the separatists that there will never be independence, that the federal government will never allow it to happen?...” All the federalists applauded him wildly. But I didn’t agree. “We’ll put our faith in democracy,” I said. “We’ll convince the people that they should stay in Canada and we’ll win. If we don’t win, I’ll respect the wishes of Quebecers and let them separate.”

This was historical revisionism, but even when he, as prime minister, faced a referendum on secession, he was too vain to admit his fraudulence and he refrained from calling out Premier Parizeau on constitutional grounds even after the Premier had revealed on Dec. 6, 1994, that the referendum proposal was on unilateral secession.

Four days later, when challenged in the Commons by a member of the Bloc Québécois on that declaration, he gave this lame response: “Let them ask an honest and clear question, not a trick to try to mix people up. An honest question: ‘Do you want to separate from Canada, yes or no?’ That takes no more than two lines, and we’ll have a very clear question, and Canada will win.”

Then, in his solemn address to the nation on October 25, 1995, five days before the referendum, 1995, he left out any reference to the requirements of the constitutional order, but merely assumed that the referendum vote on secession would be decisive. There was no mention of a requirement for a threshold of more than 50 per cent. Nor had that been his stance during the year preceding the referendum, but it was uttered once during the final days, when opinion polls showed the YES vote creeping ahead.