2014 will be an historic year for the Scots, as they will be called by their government to vote in a referendum on the political status of their community. This referendum, promised by the Scottish National Party (SNP), is surprising considering the electoral system used to elect members of the Scottish Parliament. When the Scottish Parliament was established in 1999, Scotland chose not to adopt the simple plurality system used for British elections, but rather settled on a mixed electoral system that made minority or coalition governments more likely. The first victory of the SNP in 2007, after 8 years of Labour government, was also a minority government. In 2011, however, to the surprise of all, the SNP won a majority of seats, allowing it to form a majority government and relegating the three unionist parties (Labour, Liberal-Democrat and Conservative) to the opposition.

Since 1999, the SNP has promised that it would organize a referendum on the political future of Scotland whenever it could have the legal framework for such a consultation passed by the Scottish Parliament. Its electoral triumph in 2007 was an important step in the rise of the SNP, which before the establishment of the Scottish Parliament had been a minor party in the House of Commons, and which after 1999 had served as the Official Opposition to the Scottish Labour party. However, the minority situation of the SNP government did not allow it to organize a referendum, since the members from the other three parties refused to endorse it. Benefiting from growing credibility, and especially taking advantage of Labour’s great unpopularity in Scotland (caused notably by the support of the Blair government for the American invasion of Iraq), the SNP formed a majority government after the 2011 election, which allowed it to prepare the referendum. Since majority governments are rare in...
Scotland because of the electoral system, SNP leader Alex Salmond saw a unique opportunity to attempt to change Scotland’s political status.

The SNP minority government had already organized a “National Conversation” on Scotland’s constitutional status in 2007-2009. This ‘conversation’ allowed the Scots to express their preferences on the nature of an eventual referendum that might be organized by an SNP government. It began with the government’s publication of a draft referendum law. After its re-election, the SNP organized another consultation (Your Scotland, Your Referendum); this time intended to prepare more concretely for a referendum in 2014.

In this consultation, more than 21,000 communications were received from citizens, businesses, associations, unions, etc. The consultation sought out opinions on, among other things, the wording of a referendum question, interest in a second question on a greater decentralization of powers (Devo Max), extending the right to vote to Scots 16 and 17 years old, and the role that the UK Electoral Commission would have in the referendum process. Although the results of the consultation have not been made public – this is expected later this year – some of the participants, for example the UK Electoral Commission, have already made their responses public.

A major problem for First Minister Salmond is that the support that put his party in power in 2011 does not translate into support for independence. The many opinion polls published since the election of the majority SNP government show support for independence ranging from 30% to 40% and not showing any upward trend. In a June 2012 poll, for example, 35% of those intending to vote in a referendum would support independence, while 55% would vote against it: this was a 4% drop in support for independence from a comparable poll conducted in January 2012. When pollsters frame the question in terms of changing the political status of Scotland versus the status quo, the status quo is not viewed favourably. Independence, however, is not the option for change favoured by the majority. When the polls offered a choice between independence, Scotland with more powers but still within the United Kingdom (using various formulas), and the status quo, independence received between 20% and 30% support, while the option of increasing Scotland’s powers received between 30% and 60% support.

Looking for alternatives to a question on independence, the SNP has toyed with two ideas. The first would be to ask a multiple choice question where Scots would choose between the status quo, a greater decentralization of powers, or independence. Within the rather large category of a greater decentralization of powers, two options were discussed.
The second idea examined by the SNP was to hold two referendums: the first one asking a question on a greater decentralization of powers, and the second whose question would deal with independence.

The first, known as Devo Plus, comes from the Commission on Scottish Devolution, known as Calman Commission (after its Chairman, Kenneth Calman), which was established in 2008 by the Scottish Parliament. The government and the SNP members were not involved in this commission, which was dominated by the unionist parties. The Calman Commission suggested greater financial autonomy for Scotland, notably the possibility of varying by up to 10% (as opposed to the present 3%) the tax levied in Scotland compared to that levied in other parts of the UK. The SNP has always opposed the Devo Plus option. The second option for greater decentralization of powers is commonly called Devo Max. There has always been some sympathy within the SNP for this option, which would leave the UK government with powers only in the fields of defence, foreign affairs, financial markets regulation and monetary policy. For the SNP, the strategy of a multiple choice question presents little risk (since the status quo option would have very little chance of winning) but also has very little chance of achieving independence (since this option seems unlikely to be chosen by a majority of Scottish voters).

The second idea examined by the SNP was to hold two referendums: the first one asking a question on a greater decentralization of powers, and the second whose question would deal with independence. For the SNP, the logic of having two distinct votes was to ensure that if Scots rejected independence they would at least opt for greater decentralization. An argument against having two distinct votes is that this formula could yield results whose interpretation could be contested. What would happen, for example, if Devo Max received 75% support and independence received 51%?

Experts have also proposed, in the context of two distinct questions, a somewhat different approach that would eliminate the problem of two positive answers. A first referendum would be held in which the choice would be between the status quo and constitutional change. If the status quo wins, the process stops. If the constitutional change option wins, a second referendum would ask the Scottish people to choose between greater decentralization of powers (presumably Devo Max) and independence.

The UK government appears to believe that a positive vote on independence is improbable. Prime Minister David Cameron opposed any formula other than a question on independence. In fact, the UK government, supported by the House of Lords Select Committee on the Constitution, is of the opinion that the Devo Max option and that of independence are two entirely distinct constitutional questions which should not be considered in the context of a single vote. Since the UK government is the only body constitutionally authorized to hold a referendum in the country, the parameters of a popular consultation have been negotiated. In exchange for a question that bears strictly on
independence, Prime Minister Cameron agreed to First Minister Salmond’s demand that the referendum should take place on October 18, 2014, and that the right to vote would be extended for this occasion to 16 and 17 year old Scots. A meeting in Edinburgh between Alex Salmond and David Cameron on October 15 2012, confirmed this compromise and eliminated any legal and constitutional obstacle to the holding of a referendum on the independence of Scotland. The Edinburgh Agreement, in fact, strongly legitimized the Scottish referendum.

It is interesting to note that the question of the majority needed for independence has never been raised; it is taken for granted that a 50% + 1 result would lead to the independence of Scotland. Two factors explain this. One is that when the first referendum on autonomy (devolution) took place in 1979, the UK Parliament stipulated in legislation that 40% of the Scottish people with the right to vote must support the “yes” option for it to pass. The final result of 51.6% “yes” did not bring political change, since it represented the approval of only 32.9% of the possible voters. In Scotland, the 40% clause combined with the majority of “yes” votes left the impression that the process was rigged and the result was unjust. For this reason, to raise the idea that a majority greater than 50% + 1 is necessary for Scotland to become independent was difficult. Also, since polls consistently show support for Scottish independence to be far below 50%, the UK government probably judged it wise not to start a debate over the percentage required for a “yes” victory.

The debates over the Scottish referendum process resonate in Québec on at least three points. First, the fact that the SNP juggled several options for the format of the question (for example, a multiple choice question) could lead the PQ to similar reflections, particularly if support for pure independence does not seem to justify the organization of a referendum on this question. Second, the right to vote given to 16 and 17 year old Scots for the referendum could inspire the PQ to make a similar demand. Finally, the fact that the parameters of the referendum process in Scotland were negotiated between the UK government and the Scottish executive gives the government of Canada a precedent to insist that it can, under the Clarity Act, ensure that a referendum question asks Quebecers purely and simply whether they are for or against independence.