

QUÉBEC'S HISTORICAL POSITION ON THE FEDERAL SPENDING POWER 1944-1998

*Secrétariat aux Affaires intergouvernementales canadiennes
Direction des politiques institutionnelles et constitutionnelles
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INTRODUCTION

The federal spending power is one of the most controversial aspects of Canadian federalism. The major fiscal resources available to the federal government have empowered it, especially since the Second World War, to interfere in fields of exclusive provincial jurisdiction by creating programs, either unilaterally or by means of conditional grants. The federal government thus uses its spending power to seek a dominant role in fields that are not within its jurisdiction, such as education, health and social services.

Successive Québec governments have constantly and unequivocally denounced this attempt at federal government appropriation of Québec's capacity to set its own priorities. Regardless of the political party they represented and the political status they favoured for Québec, these governments systematically opposed the federal spending power: first, by calling for the federal government's withdrawal from Québec's jurisdictions and a new distribution of financial resources which would give Québec a tax base commensurate with its legislative and social responsibilities; second, by arguing that exercising this power was contrary to the distribution of powers and the very spirit of federalism; third, by expressing the importance, for the people of Québec, to retain full control of their options in fields essential to maintaining and developing specificity; and finally, by proving that within its own jurisdictions, the Government of Québec is in the best position to implement programs in the interest of Quebecers.

Using quotations from the Prime Ministers of Québec and certain Québec ministers, this document traces Québec's constant positions regarding the federal spending power, from the Federal-Provincial Conference on Reconstruction in 1946 to the current discussions on Canada's Social Union. The text is divided into seven parts, each corresponding to a government. For each government, the federal spending power is discussed in two sections. The first section deals with Québec's positions regarding the federal spending power in general. The second section offers a few illustrations of the exercise of the federal spending power and its opposition by Québec in the fields of education, health and social services.

1. Governments of Mr. Maurice Duplessis and Mr. Paul Sauvé (1944-1960)

A. General position regarding the federal spending power

As Prime Minister, Mr. Maurice Duplessis defended Québec's complete autonomy in the jurisdictions conferred on it by the Canadian Constitution:

[...] the very essence of Confederation is made of sovereign provincial authorities, within the scope of their jurisdiction, and a sovereign central authority, within the scope of its jurisdiction. When Confederation was discussed and decided upon, it was based on the principle of complete provincial autonomy.¹

Mr. Duplessis' government, on numerous occasions, manifested its opposition to the use of the federal spending power. Having seen the federal government occupy the three major fields of taxation (personal income tax, corporate income tax, inheritance tax), the Government of Québec insisted that the fiscal balance be re-established in the Canadian federation. Thus, Québec asked the federal government to withdraw from certain sources of taxation so that the provinces could recover the tax base necessary to exercise their own areas of jurisdiction fully, rather than depend on federal grants.

It is one of the essential prerogatives of autonomous provinces to be able to raise, by means of direct taxation and in the way they deem best, the moneys necessary for the good functioning of public services and also for the application of the laws adopted by their Parliaments; these prerogatives ought to be considered not only in terms of immediate needs but also to pursue a forward-looking policy, since to govern is to foresee.

The federative system which necessitates, fundamentally, an attribution of public tasks, must also provide a correlative division of revenue sources. Of what benefit to the provinces would be the most extensive legislative and administrative powers if, on the other hand, they were prevented from collecting the revenues that the exercise of these powers demands?

A central government which would appropriate to itself the sources of taxation would, by this very fact, reduce the provinces to legislative impotence. Effectively, a province with no other revenues than federal subsidies would become a kind of inferior organism, under control of the authority which could measure out its means of subsistence. In other words, such a situation would amount to replacing the reins enabling one to drive with shackles that paralyze and enslave. It would amount to giving the key of one's house to another. This key is a fitting symbol of fiscal powers and indicates that one is master in one's own home, as we desire and have a perfect right to be.

The Canadian constitution consecrates the exclusive right of the provinces to legislate respecting matters of very great importance, notably in regards to education, hospitals, asylums, institutions and charitable homes, [. . .]. A progressive legislation in those

domains necessarily entails considerable expense and clearly requires that the provinces have the right to raise the necessary moneys. Fiscal power is all the more indispensable in the case of a province, such as the Province of Quebec, which is developing itself with giant strides; development which greatly enriches Canada but which exacts, on the part of the province, numerous and additional outlays in particular for new schools, new hospitals, for social legislation and for other provincial purposes.²

For Québec, the federal government's occupation of fields of taxation and the redistribution to the provinces of the taxes thus collected by means of shared-cost programs or direct grants encroached directly on Québec's exclusive jurisdiction, particularly concerning education, health and social services. At the Federal-Provincial Conference on Reconstruction in 1946, the Government of Québec argued that the federal government's approach violated the spirit, if not the letter, of the Constitution of 1867 and prevented Québec from developing its social policy according to its own priorities.

The exclusive rights of the Provinces in matters of social legislation, education, civil rights, etc. must be safeguarded in their entirety if confederation is to endure.³

The Dominion proposals with respect to social security are obscure. These proposals would certainly bring about very profound changes in our social and family institutions since they contemplate that the social legislation and a good portion of the labour legislation, both of which are within the exclusive competence of the Provinces, would escape provincial jurisdiction. In this respect, the federal proposals have to do at the same time with property, civil rights, education and relations between capital and labour, all fields reserved to the province under section 92 of the British North America Act.⁴

In accordance with the position it defended, the Government of Québec refused to sign the so-called "tax rental" agreements of 1947 and 1952, whereby the provinces allowed the federal government to occupy all fields of taxation in return for a "rent" in the form of an unconditional grant. In 1954, the National Assembly adopted a law creating a provincial personal income tax. This tax, which represented 15% of federal income tax at the time, assured Québec of some control over its legislative priorities.

B. Illustration of Québec's position on education, health and social services

a) Shared-cost programs

On issues related to education, health and social services, as in other fields,⁵ the government of Mr. Maurice Duplessis strongly contested the use of the federal spending power. For Québec, the many shared-cost programs announced by the federal government in that period constituted intrusions into areas which, in addition to falling within its exclusive jurisdiction, represented the very specificity of Québec society.

Of what use would it be for the provinces to have the right to build schools and hospitals if they are dependent on another authority in order to obtain the necessary

funds? Their sovereignty with respect to education and hospitalization would then be meaningless.⁶

However, despite Québec's opposition, shared-cost programs came into effect across Canada. These included : public health grants (1948), disabled persons allowances (1954) and unemployment assistance (1956-1958).

In matters of health insurance, the Government of Québec, on the occasion of federal proposals of 1946, vigorously defended its exclusive jurisdiction over health:

The Government of the Province of Quebec has concerned itself with the problem of health insurance. It realizes, however, that the plan proposed by the federal authorities is, by common consent, imperfectly elaborated, that it cannot be carried into execution in its present form and that it contains principles that are incompatible with the autonomy of the province. For instance, let us enumerate subject-matters which relate to health insurance and which are within the exclusive jurisdiction of the Provinces: the establishment, maintenance and administration of hospitals, asylums and charitable institutions; education in all its branches, including the university studies, the regulation of professions, as well as the conditions of admission to the practice of medicine and the relations between physicians and clients. Health insurance is intimately related to all these matters and legislation of this type assigned exclusively to the Central Government, would inevitably lead to federal interference in all these fields which ought to be free of Dominion authority.

Moreover, the establishment by the Dominion Government of a health insurance plan would very often give rise to a duplication of provincial services.⁷

In the 1950s, when the federal government led by Mr. Louis St-Laurent renewed its attempt to intervene in the health sector by introducing the hospital insurance program, Québec argued the same position. The program provided for 50% funding of provincial hospital insurance plans, provided that these plans complied with certain standards defined by the federal government. Despite Québec's repeated objections, this program was finally instituted under Mr. John Diefenbaker's Conservative government in 1958. The equivalent Québec program came into effect in 1961, when the government of Mr. Jean Lesage accepted conditional grants from the federal government on a temporary basis.

Québec's opposition to the federal spending power was also manifested against direct grants to individuals (family allowances) and organizations (grants to universities).

b) Family allowances

The question of family allowances was a litigious issue between Ottawa and Québec. The report of the Tremblay Commission of Inquiry on Constitutional Problems summarized the situation as follows:

In 1944, the federal government once more intervened in the provincial field. However, it did not on this occasion trouble to reach an understanding with the provinces. It had

its law on family allowances passed, stating that, beginning with July 1, 1945, monthly allowances would be paid to all children under 16 years of age. [. . .]

In Quebec, the new law led to many objections. The Provincial government asked certain legal authorities to give their opinions on the constitutionality of such a move. Their reply was: the law is unconstitutional and constitutes a dangerous infringement on provincial rights, notably on those of the province of Quebec. The Quebec Prime minister also wrote a letter to the Canadian Prime Minister protesting the federal initiative.⁸

c) Grants to universities

After accepting in 1952, for one year only, that Québec universities receive grants recommended by a federal Royal Commission,⁹ Québec subsequently refused these grants, seeing them as interference in the field of education. Upon Mr. Duplessis' death in 1959, the dispute persisted. His successor, Mr. Paul Sauvé, defended Québec's position.

In my opinion [. . .], it is very clear that the central administration should not tax for provincial purposes, and if, at a given time, in the near or distant future, Ottawa agrees on this, there will be no more conflict in the area of taxation.¹⁰

Québec's firm attitude on this issue led the federal government to reach an agreement with the Québec government. This agreement, concluded in 1959 between Mr. Diefenbaker and Mr. Sauvé, and signed on behalf of Québec by the latter's successor, Mr. Antonio Barrette, granted Québec a corporate income tax abatement. This was the first time that Québec was able to opt out of a federal program.¹¹

2. Government of Mr. Jean Lesage (1960-1966)

A. General position regarding the federal spending power

Throughout his term as Prime Minister, Mr. Lesage worked to ensure that Québec retained control of its social policy, despite the fact that the federal government still held most of the tax resources. Mr. Lesage's government, like that of Mr. Duplessis, believed that it was necessary to create a new balance in the Canadian federation so that the provinces obtained financial resources commensurate with their legislative responsibilities in social matters.

The new balance of which I am speaking concerns both intergovernmental consultation, the distribution of the country's sources of revenue and the distribution of responsibilities from one government sector to another.¹²

At the Federal-Provincial Premiers' Conference in 1960, Mr. Lesage reaffirmed Québec's position regarding the federal spending power by denouncing the conditional grants paid to the provinces in the form of shared-cost programs.

Conditional grants made by the Federal government to provinces in connection with joint programmes administered by the provincial governments create all sorts of difficulties. We understand why, when the Federal government decides to participate in such programmes, it requires that certain conditions be fulfilled by the provinces, but these conditions themselves cause frequent complications.

Experience shows that often these joint programmes do not permit the provinces to use their own revenues as they wish nor to take local conditions sufficiently into account. Moreover, they raise administrative difficulties that are the cause of a loss of efficiency or duplication of effort and increased costs. The provinces must have in their service persons specially charged with making reports to Ottawa concerning the execution of these programmes and the Federal government must, in its turn, hire employees to see that the conditions laid down by Ottawa are fulfilled by the provinces.¹³

Mr. Lesage declared on many occasions that the inflexible use of the spending power by the federal government reflected a unitary vision of federalism:

[. . .] since there is general correspondence between the services offered from one province to another, the search for uniformity becomes a form of administrative perfectionism, one of the most obvious results of which is to confine the provinces' action within rigid and sterilizing structures and methods and create a unitary state, to all intents and purposes.¹⁴

For Mr. Lesage's government, this vision of federalism had to be changed: We feel that it must be clearly established as a basic principle of our federal system that the exceptional powers of the federal Parliament are to remain exceptional, and that their use must be limited to particular cases.¹⁵

B. Illustration of Québec's position on education, health and social services

In the early 60s, the federal government's use of its spending power was mainly apparent in the fields of education, health and social policy, which are fields of exclusive provincial jurisdiction and sectors in which Québec wanted to develop its own specific programs.

Three fundamental principles guide Québec's thinking on social security. First, Québec feels that the various social security measures should be designed and administered in the perspective of a true family approach; second, it considers social security to be an area of provincial responsibility on constitutional, cultural and practical grounds; it is necessary to keep the benefits under its social security legislation at a level at least comparable with that prevailing in the country as a whole, and at a higher level if possible, if its citizens' needs so require.¹⁶

Mr. Lesage reaffirmed Québec's position at a Conference on Poverty in 1965:

In examining successively all the weapons to be used in the "war on poverty," it quickly becomes clear that in using them itself the federal government would inevitably be led

to encroach on areas that are not proper to it. This is the case, for example, of the Canadian social welfare scheme, the policy of specially designated regions and regional development in general, manpower mobility, health insurance, aid to education, and so on. An entire range of sectors that are plainly within provincial jurisdiction are affected here: social welfare, resource development, working conditions, health, education, etc. There is no need for a long legal argument to prove the point. Obviously it is always possible to find exceptions to the general conclusion we have reached, but it has to be admitted that the federal government, through techniques and means of action such as those the "war on poverty" would bring into play, could easily come to take over the initiative and leadership in the very areas where Québec is determined to shoulder its constitutional responsibilities [...].

Both for reasons of efficiency and for constitutional reasons the government of Québec is the only one that can and should develop and implement such a policy on its own territory. The corollary to this is that Québec cannot accept that the government of Canada assume this responsibility. Québec does not however exclude the possibility of interprovincial cooperation and mutual consultation.¹⁷

During Mr. Lesage's term of office, Québec achieved three major gains in its struggle against the use of the federal spending power in the key sectors of education, health and social services. These were the maintenance of the Québec loans and bursaries and schooling allowance programs, the creation of the Québec Pension Plan and an agreement on withdrawal from shared-cost programs.

a) Schooling allowances and the student loans and bursaries program

In 1964, Ottawa established a program of allowances for students 16 or 17 years of age and a program of student loans, obtained from banks but guaranteed by the federal government. At the time, Québec already had such programs and wanted to continue to administer them.

On the issue of youth allowances, Québec wanted the federal government to transfer it, in the form of tax points, the amounts which it would have spent on youth in the province in the absence of the Québec schooling allowance program.

That is why Quebec wants the government of Canada, acting in a spirit of justice and of logic, to grant it in the form of fiscal equivalence, the amounts which it would have paid to young Quebecers of 16 and 17 years of age, had the Quebec government not already been in this field. According to preliminary calculations, the amount in question, for the first complete year, is of the order of \$15 million which would involve an enlargement of the field of personal income tax of about 3 points.¹⁸

With respect to the student loans program, Mr. Lesage reiterated Québec's opposition to federal government interference in education by means of the spending power:

The fact that the federal government offers loans only, and not scholarships and loans to students as, at one time, it appeared that they might do, may, at first sight, appear to be

an attempt to avoid the constitutional problem which granting scholarships would have created. Actually, through its control over credit, the federal government appears to be completely within its jurisdiction in granting loans instead of scholarships.

We do not think that such a procedure avoids the constitutional problem. The students themselves felt the same way about it since they have openly opposed the new federal policy.

The difficulty stems from the fact, not that it is a question of loans but rather of loans without interest to students. The loans will be granted by banking institutions with federal government endorsement but the central government will assume the refund of interest charges. In which case, this refund becomes a direct federal government subsidy to citizens for educational purposes. Furthermore, these citizens are students and this is certainly not a mere coincidence but rather the result of a policy to aid education, which belongs to the exclusive jurisdiction of the provinces.

For these two reasons, the Quebec government insofar as it is concerned, cannot accept that the federal programme under consideration be applied in its present form. [. . .]

Under the circumstances and in order to solve the problem presented by the federal policy of loans to students, Quebec requests that the amounts which the government of Canada would have devoted to the refund of interest on the loans granted to Quebec students by chartered banks be handed over to the Quebec government in the form of fiscal equivalence. In order to establish this equivalence we would accept that account be taken of the relative proportion of the Quebec population.¹⁹

At the same time as Québec obtained the right to opt out from joint programs discussed below, it secured the three-point abatement requested on the personal income tax, as well as financial compensation under the Canada Student Loans Program.

b) The pension plan

At the Federal-Provincial Conferences held in 1963 and 1964, Québec expressed its disagreement with the federal decision to create a Canada-wide pension plan. The application of such a program would prevent Québec from exercising its jurisdiction in the matter and thus create a plan that could become a major investment fund under its full control.

[. . .] Quebec refused that the Canada Pension Plan apply to its citizens. In this case, we have elected to stick to the spirit of the contracting out formula and we shall institute in Quebec, a system which will be provincial, public, universal and based on actuarial hypotheses.²⁰

In April 1964, an agreement between Québec and Ottawa allowed Québec to create an independent pension plan, the Québec Pension Plan. In 1965, Québec and the federal government adopted legislation implementing their respective plans.

c) Québec's withdrawal from "established" shared-cost programs

Historically, Québec generally had to resign itself to participating in shared-cost programs created by the federal government despite its "constitutional, cultural and practical" objections. At the Federal-Provincial Conference of 1960, Québec agreed to receive the federal grants that the previous government had refused, so as not to deprive its population of programs for which they paid federal taxes. However, while continuing to denounce the use of the federal spending power, Québec proposed that the federal government stop funding these existing programs and let the provinces levy the taxes necessary to develop and maintain their own initiatives.

But these programmes are now sufficiently well established on the provincial scale to enable the Federal government to cease taking part in them and to vacate these fields. The Federal government should be prepared to accept this request. Obviously, in such a case, it would be necessary to compensate the provinces fully for the additional financial responsibilities assumed by them. This financial compensation should take the form of additional taxation rights specifically reserved for the provincial governments and of corresponding equalization payments. If this were done, each province would be free to use its revenues as it sees fit in the fields of jurisdiction that belong to it. We are convinced that it would be relatively easy to find a compensation formula that would satisfy all the governments. [. . .]

However, in the meantime, the government of the Province of Quebec finds itself confronted with a "fait accompli." At the present time the citizens of Quebec contribute through their federal taxes to the financing of many joint programmes applied in the rest of the country without deriving any benefit from these programmes. The taxpayers of Quebec cannot be expected to allow such an unfair situation to continue. Therefore, the province of Quebec is taking the necessary steps to accept, on a temporary basis, and without prejudice to its full sovereignty, all the conditional grants that it is not now receiving but which are made to the other provinces by the Federal government. We have in mind particularly Hospital Insurance and the Trans-Canada highway.²¹

After Mr. Lester B. Pearson's Liberal government was elected in Ottawa, Québec reiterated its position at the Federal-Provincial Conference of 1963:

Certain among these undertakings are now sufficiently well established at the provincial level so that the federal government could cease to participate in them and surrender these fields. The federal government declares its willingness to accept this demand. Obviously, it will be necessary to fully compensate the provinces for the additional financial responsibilities which they would be taking on. This financial compensation should take the form of additional taxation rights specifically reserved for provincial governments and of corresponding equalization payments, should the need arise. Each province would thus be free to dispose of its revenues as it sees fit in the fields of jurisdiction which belong to it, should the province judge it in its best interest to no

longer participate in well-established joint programmes.²²

In its Budget Speech of March 1964, the federal government proposed to transfer joint programs of a continuing nature to any provinces that so wished:

[. . .] if the provinces so wish, we are prepared to transfer to them full financial responsibility for some of these established shared-cost programs of a continuing nature, and to make suitable fiscal adjustments either in a larger share of the direct tax fields or by changes in, or supplements to, the equalization payments.²³

A few days later, at a Federal-Provincial Conference, Québec proposed to withdraw from shared-cost programs it had joined and not participate in future programs. By way of compensation, it called for sufficient fiscal latitude in the form of a transfer of tax points.

Quebec had decided, since 1960, to put an end to joint programmes. This stand was again expressed at the Federal-Provincial Conference of November 1963. [. . .]

These grants thus become a compulsion which, for all practical purposes, places the provinces in a state of subordination vis-à-vis the central government. As a matter of fact, if some of the provinces, because of their constitutional position, do not want to submit to the conditions established by the central government, they are seriously penalized because they are deprived of sums to which their citizens have nonetheless contributed. Above all, it is this situation which, since 1960, has forced Quebec to participate in several joint programmes. However, this participation has always been for us but a makeshift solution while waiting for a satisfactory solution to his problem. We believe that the time has now come to solve this question once and for all. [...]

In the case of future shared-cost programmes, and of those already existing but in which Quebec is not participating at present, we would like to be granted financial equivalence which would then be transposed into an additional freeing of taxation fields taking as a basis for calculation the relative proportion of Quebec's population in relation to the whole of the Canadian population.²⁴

After intergovernmental negotiations, the federal government proposed a withdrawal formula (or opting-out formula) whereby a province could opt out from "established" shared-cost programs (the hospital insurance program, public health grants, certain social welfare and unemployment assistance programs and the technical training program) and receive compensation in the form of tax points²⁵ and monetary compensation. In 1965, this "opting-out" formula was accepted by Québec and confirmed by a federal statute.²⁶

That same year, the federal government put forward its proposal for a Canadian health insurance program. Far from opposing the idea of a health insurance program, Mr. Lesage's government believed in the necessity of a program fully controlled and administered by Québec. It considered that any new program should respect the spirit of the right to opt out on which an agreement had just been concluded. At the Federal-Provincial Conference of 1965, the Prime Minister of Québec explained

both his opposition to the federal project and Québec's decision to opt out from shared-cost programs:

Québec's decision in this matter rests on the acceptance of our obligations to our citizens and on the necessity to exercise our rights; it is not guided by any desire for isolation. In other words, we believe that the exercise of provincial jurisdiction in this field should not be an obstacle to the establishment in the Canadian provinces, under the administrative system best suited to each, of a medical insurance plan providing the fullest possible coverage.

This brings us to the role which the federal government can play in medical insurance. Let it be clear from the outset that constitutional jurisdiction in this field lies with the provincial governments. For reasons of their own, which we respect, some provinces may prefer to rely on the federal government, either by complying with its standards or by joining in a shared-cost programme. By now, everyone knows that Québec does not intend to proceed that way.²⁷

Obtaining a right to opt out did not totally counter the federal government's intervention in Québec's exclusive jurisdictions. In fact, the federal government continued to oblige Québec to apply equivalent programs that complied with certain standards. Moreover, the right to opt out only applied to established programs, which left the federal government full latitude to institute new programs. Nevertheless, opting out corresponded to a vision of federalism more respectful of Québec's autonomy than a unilateral and uniform exercise of the federal spending power.

3. Governments of Mr. Daniel Johnson (senior) and Mr. Jean-Jacques Bertrand (1966-1970)

A. General position regarding the federal spending power

As did the Liberal government of Mr. Jean Lesage, the Union Nationale government headed by Mr. Daniel Johnson opposed the federal government's intervention in Québec's jurisdictions. In 1966, Mr. Johnson renewed Québec's decision to opt out from established joint programs and not to participate in any new program. Moreover, he demanded that Québec's withdrawal be accompanied by unconditional fiscal compensation:

Québec does not foresee renewing the joint programmes from which it has already withdrawn, or committing itself to join any new programmes of this kind.

In return, Québec demands **unconditional compensation** to enable it to ensure services for its population which are consistent with its own needs.

Generally, the system of shared-cost programmes is incompatible with the pursuit by the French-Canadian nation of its essential objectives, since these impose priorities on it likely to displace those which it would otherwise establish, and reduce its true budgetary autonomy.

Québec hopes that once and for all it will be understood that for socio-cultural reasons, Québec unreservedly insists that its constitutional jurisdiction be respected, and that it will brook no federal interference with this jurisdiction, whether that interference be direct or indirect.²⁸

For Mr. Johnson, the shared-cost programs imposed by the federal government were not only unacceptable in the perspective of the fiscal balance of the Canadian federation, but also in terms of Québec's specificity, particularly in social matters.

[. . .] joint programmes impede the free growth of our people by imposing on them priorities likely to upset those they would otherwise adopt, in addition to reducing their effective budget autonomy. [. . .] For a nation like ours, their effect is to freeze its sources of taxation and take away full control over areas of activity which are rightfully its own. Joint programmes therefore are generally incompatible with the basic aims pursued by the French-Canadian nation.²⁹

At the Federal-Provincial Conference of 1968, Québec submitted a brief on the constitutional question which reiterated this position, emphasizing respect for Québec's jurisdiction. In the Québec government's opinion, the federal spending power should no longer be exercised in fields of provincial jurisdiction.

Our proposal in this respect and the importance we attach to it should not come as a surprise, since the interpretations which have been placed on these powers [. . .] lead to consequences which we find unacceptable. [. . .] **We also feel that the federal spending power should be limited to federal matters.**

There are two main reasons behind Québec's strong insistence on regaining full control over social security: first, because the simultaneous presence of two governments in this area thwarts all effective planning, makes for contradiction between the various programmes and leads to waste and administrative overlap; second, because social security measures directly affect our nation in its intimate vitality.³⁰

Mr. Johnson's successor, Mr. Jean-Jacques Bertrand, maintained Québec's position denouncing the exercise of the federal spending power:

Our present constitution - I almost said our old constitution - is silent on so many matters that it often gives us no inkling as to which sector of government is responsible for which field of endeavour. And above that, it is not always abided by. Thus in the long run, thanks to its financial resources, the federal government ends up with actual jurisdiction over matters where Québec's interest is vitally important.³¹

Mr. Bertrand also reiterated Québec's intention to opt out unconditionally from shared-cost programs:

Governments that are ultimately responsible for given fields of activity must have

access to resources that they can handle as they see fit and allocate in the way they want to carry out their responsibilities. Thus **all government funds must be such that they can be spent unconditionally. Successive Québec Governments have stressed this point and the present government is determined to follow the same policy. Conditional grants, subsidies or transfers are wholly unacceptable** since they earmark resources for purposes that may run counter to the policies which the government concerned has adopted. We have seen too many examples of such conflicts in the past and have no intention of witnessing any more in the future. Indeed the Québec government recognizes that the other provincial governments might find it convenient, for a variety of reasons, to participate in shared-cost programs. But it will not accept them for itself.^{[32](#)}

B. Illustration of Québec's position on education, health and social services

Mr. Daniel Johnson's government clearly demanded respect for Québec's exclusive jurisdiction in social policy matters. In 1967, the Québec Prime Minister recalled the position he had taken the previous year in the following terms:

Other Québec positions have already been made known. Thus, in the brief submitted in September 1966 to the fourth meeting of the Federal-Provincial Tax Structure Committee, we stated: "**As the mainstay of a nation, it wants free rein to make its own decisions affecting the growth of its citizens as human beings (i.e., education, social security and health in all respects).**" [. . .]

Further in the brief, we stated that, while awaiting a new constitution, we would first have to proceed with a re-arrangement of functions, which might even be initiated within the framework of our present constitution: "**By this process, the Québec Government would gradually become solely responsible within its territory for all public expenditures on every form of education**" [. . .] Existing federal programmes [. . .] would be taken over by Québec, which would maintain their portability where applicable.^{[33](#)}

In 1968, the Québec Minister of Family and Social Welfare reiterated this position:

In 1970 the government of Québec will withdraw for good from all shared-cost programmes in the field of welfare. In addition, Québec has requested, within the framework of a realignment of functions and a new Constitution, control over an integrated social security system. These are fundamental concerns that naturally colour our entire attitude toward intergovernmental relationships.^{[34](#)}

During the constitutional negotiations begun in 1968, Mr. Johnson's successor, Mr. Jean-Jacques Bertrand, indicated that any revision of the Canadian Constitution should explicitly confirm Québec's jurisdiction in social matters:

We do not want to impose our conception of things on others, but we believe that,

insofar as the people of Quebec are concerned, the responsibility cannot lie, as much for practical as for cultural reasons, with the Quebec Government.³⁵

a) Education

In 1966, Mr. Johnson expressed his opposition to federal programs announced in the fields of adult education and university research.

As far as adult education is concerned, we must take into account two completely different considerations. Adult education is firstly part of an integrated educational system and, under these conditions, one cannot see according to what constitutional principle the Federal Government would want to take on any responsibility whatever directly or indirectly. [...]

For Quebec, the principle of continuing education is absolutely fundamental. The stand taken by the Federal Government in the document it has just presented us contradicts this principle. It is entirely unacceptable to Québec. [...]

Quebec's position remains the same with respect to university research which is part of the general structure of education. Education and research are indivisible at the university level. Under the terms of provincial jurisdiction in the education field, it must be recognized that university research is also under provincial jurisdiction.³⁶

A federal program pertaining to adult education and continuing education was nevertheless implemented in 1967. Under an agreement with Québec, a federal-provincial committee was assigned the responsibility of coordinating federal and provincial manpower programs. The federal government thus entered the continuing education sector.

Following its opposition to direct funding of universities, Québec had benefited since 1960 from a tax abatement allowing it to fund post-secondary education itself. In 1967, the federal government substantially amended this program by replacing the direct federal grants to universities with a post-secondary education financing program. Under this program, the provinces were granted an additional tax abatement of four personal income tax points, as well as cash grants to deal with the growing costs of university education. However, the federal contribution remained conditional on the provinces using the additional taxes for the same purposes.

b) Health and social services

The year 1966 was marked by the enactment of two federal statutes instituting major shared-cost programs: the *Canada Assistance Plan*,³⁷ integrating and improving the different existing allowance programs (allowances to disabled persons and the blind, unemployment assistance) and the *Medical Care Act*,³⁸ creating a Canada-wide health insurance plan.

Since Québec had exercised its option to opt out from social welfare programs in 1965, a federal-provincial agreement provided for the conditions of the federal contribution to the Public Assistance

Plan in Québec.

Prime Minister Lesage had indicated in 1965 that Québec would not participate in the national health insurance program but would instead seek to create its own program with a fiscal arrangement similar to that of the opting-out formula.³⁹ Mr. Daniel Johnson's arrival in power did not alter Québec's position of principle on this issue. Mr. Johnson's government, like its predecessors, considered it unacceptable that the *Medical Care Act* dictate conditions to Québec in the field of health, which fell within its exclusive jurisdiction.

The first question submitted to our attention is that of the federal *Medical Care Act*. I do not need to emphasize the fact that Québec considers that health insurance constitutionally falls within the legislative jurisdiction of the provinces and that it intends to exercise this jurisdiction by establishing its own health insurance plan. On November 10, the Government of Québec created a Commission of Inquiry on Health and Social Welfare, specifically to guide it in this field. This Commission will present a first report next July, which will focus on health insurance. I can assure you that, upon receipt of this report, the Government will take the necessary steps to study it and establish its policy on health insurance.

The constitutional jurisdiction of the provinces in this matter is further recognized by the federal *Medical Care Act*, since it explicitly opens the door to fiscal compensation as of 1973. In our opinion, however, the constitutional responsibility of the provinces also requires that, until 1973, the aid contributed by the federal government not dictate to the provinces when and how to organize their own health insurance plans. On the contrary, each province must remain completely free to decide the type of program that suits it, and it is up to federal law to adapt to the provincial laws, rather than the contrary.⁴⁰

In August 1967, the Commission of Inquiry on Health and Social Welfare, chaired by Mr. Claude Castonguay, published the first volume of its report. This study concluded on the necessity for Québec to adopt a universal health insurance program⁴¹ and proposed an income tax increase of about 1% to fund the program. The Commission also recommended that:

[. . .] the Government of Québec ask the Government of Canada to grant it unconditional fiscal compensation once the *Medical Care Act* comes into force.⁴²

The following year, the Government of Québec still hoped to reach an agreement with the federal government which would enable it to fund its health insurance program by means of a transfer of tax points similar to the one obtained in 1965. However, after the enactment of the federal program in July 1968, the federal government imposed a "social development" surtax on all Canadian taxpayers, thus putting pressure on the provinces to join the national program. Mr. Jean-Jacques Bertrand's government protested, demanding that these taxes be transferred to the provinces so that they could establish their own health insurance plans.

Ottawa has placed us in a position where we might be one of the last provinces to sign [.

. .]. Either Quebec joins the programme, and thus flies squarely in the face of the Canadian constitution, or else we do not join up and thus deprive our people of a lot of money to which they have the right. What does one do in a case like this? Don't we have to be realistic and make the best of the situation, that is, sign the agreement with Ottawa, counting on its being the last time?⁴³

Faced with Ottawa's refusal to accept Québec's request, Québec resigned itself to join the federal program and accept the conditions posed by the *Medical Care Act*.

4. First government of Mr. Robert Bourassa (1970-1976)

A. General position regarding the federal spending power

Mr. Robert Bourassa's Liberal government also saw the spending power as a federal intrusion into Québec's jurisdiction. The Prime Minister, like his predecessors, considered that a new fiscal equilibrium would enable Québec to fully control all of its jurisdictions.

[. . .] we can only achieve a workable equilibrium if, within the framework of general principle, we can ensure the necessary flexibility so that each order of government may find in the exercise of its fiscal powers the receipts it needs and this, without disturbing the overall economic growth or the sectorial equilibrium of the economy.⁴⁴

At the September 1970 Constitutional Conference, the Québec government insisted on the fact that an eventual constitutional agreement had to include guarantees for Québec concerning social policy. On this basis, it asked for the elimination of the federal spending power, or at least for unconditional compensation.

[. . .] **Québec continues to believe that ideally, this federal spending power in fields under the exclusive competence of the provinces simply should not exist and that the federal government would do well to simply give it up.** Nevertheless, Québec would be ready to accept the federal proposals provided that the form of compensation for non-participating provinces be improved in such a way that these provinces are not really affected in exercising their constitutional right of non-participation.⁴⁵

In November 1971, Mr. Bourassa specified that the compensation sought for withdrawal from cost-sharing programs had to be fiscal rather than financial.

Québec considers [the] question [of compensation for the withdrawal from certain cost-sharing programs] extremely important because it prefers to continue collecting its own taxes rather than having to receive financial compensations.⁴⁶

The Government of Québec's Throne Speech, read in the National Assembly in March 1973, made restoring the equilibrium of the federation's distribution of taxation a priority:

The Government's major priorities in federal-provincial relations are as follows: 1) the question of the financing of the federation in order to achieve a distribution of fiscal resources more in accordance with the constitutional responsibilities of the federal and provincial governments.⁴⁷

Finally, in 1976, Mr. Bourassa's government on two occasions proposed a limitation of the federal spending power. First, at a federal-provincial conference, the Prime Minister submitted a proposal for the "withdrawal of the federal Government from the three shared-cost programs in return for a satisfactory transfer of an unconditional nature to the Provinces."⁴⁸ Subsequently, Québec submitted a proposal whereby any exercise of the federal spending power would be subject to the approval of a majority of provinces. They would also have been authorized to prescribe the conditions of use of the amounts allocated to implement programs.⁴⁹

B. Illustration of Québec's position on education, health and social services

a) Social policy

Mr. Bourassa's government emphasized respect for Québec's jurisdiction in health and social services:

No one would dare deny that the policies in matters of health services and social services come primarily under the jurisdiction of the provinces. Nevertheless, in actual fact, the federal government has always set priorities and fixed available resources through the means of rigid financial programs. [. . .]

As for income security, we deem it essential that the provinces be given a predominant position in the formulation of programs if they are indeed to be cohesive and take into account manpower policies and regional characteristics of the economy. Indeed, an income security policy could not be drawn up without regard to the objectives of social and manpower services.⁵⁰

In 1970, Mr. Claude Castonguay, Minister of Health and Social Affairs, declared that the Canadian Constitution had to recognize Québec's priority or exclusivity in all fields related to social policy:

On a short term basis, the government of Québec is ready to examine various formulas aimed at solving immediate problems. Nevertheless, the organization and distribution of social and health services being clearly within the exclusive competence of the provinces, an adequate and permanent financing solution must be worked out as soon as possible.⁵¹

In 1971, Mr. Castonguay made the following statement:

[. . .] the Government of Québec believes that social policy has a unique character that accommodates poorly to overlapping jurisdictions, at the risk of leading to the pursuit of different and even contradictory objectives.

By social policy, the Government of Québec means all policies in each of the following: income security, manpower, including vocational training and manpower centres, social services [. . .] health services and financing measures such as hospital insurance and health insurance [. . .]. [. . .]

Also, as the Prime Minister of Québec indicated in his brief to the Constitutional Conference of September 1970, the Government of Québec believes it is essential to have priority responsibility for the design of social policy, and thence, for each of its components, so that the policy conforms to the objectives or priorities of Québec society, whose development it is primarily responsible for ensuring. By priority responsibility in the design of social policy, we mean the primacy of the power to legislate or even the exclusivity of such power. However, this does not necessarily result in primacy in the financing and administration of the various measures.⁵²

The failure to give clear recognition to the primacy of provincial jurisdiction in social policy matters is one of the reasons why the Government of Québec refused to accept the federal proposals at the Victoria Constitutional Conference in June 1971. Moreover, these proposals did not meet Québec's expectations for a renewed distribution of powers.

In the current state of the constitutional reform issue, the Government of Québec cannot make a positive recommendation to the National Assembly concerning the acceptance of this draft constitutional charter.

This decision is due to the necessity of agreeing, wherever possible, on clear and precise constitutional texts, so as to avoid transferring to the judicial authorities the responsibility that primarily belongs to political authorities, the people's elected representatives.

Thus, the texts concerning income security leave some uncertainty that is inconsistent with the objectives inherent in any idea of constitutional review. If this uncertainty were eliminated, our conclusion could be different.⁵³

b) Health insurance

In 1967, the Commission of Inquiry on Health and Social Welfare recommended the introduction of a universal health insurance program in Québec. A bill to that effect had been tabled by the previous government in March 1970. A new bill was tabled in June of the same year. The Québec health insurance plan came into effect on November 1.

Finally, we should remember that while it agreed to participate in the Canadian health insurance program, the Québec government was still seeking to crystallize, in a final agreement, the fiscal transfers of tax points granted by the federal government on the occasion of Québec's withdrawal from the established programs in 1965. At the Premiers' Conference in November 1971, the Prime Minister of Québec, Mr. Robert Bourassa, stated that he was seeking an agreement with the federal government on an unconditional withdrawal formula that would include the health insurance plan:

[. . .] I wish to emphasize that the Government of Québec wishes to terminate the provisional arrangements concerning programs of hospitalization and health insurance in order to replace them with a definitive withdrawal formula. This formula should meet two preliminary conditions:

1) it should result in unconditional payments, that is to say, they should no longer be submitted to administrative control;

2) those provinces availing themselves of this formula should have the assurance that the evolution of both costs and federal compensation will not have the effect of increasing the contribution to these programs of provincial funds for the benefit of federal budgets.

I believe that these conditions could be met effectively by granting to the provinces an abatement of tax points on revenue sufficient to cover the real costs of the programs. This method of financial compensation is unconditional and increases annually at a rate sufficient to compensate for the rise in costs.⁵⁴

5. Governments of Mr. René Lévesque and Mr. Pierre Marc Johnson (1976-1985)

A. General position regarding the federal spending power

For the government of Mr. René Lévesque, the federal spending power should only be exercised in sectors of exclusive or concurrent federal jurisdiction and compensation should be granted to provinces that refused federal interventions.

Québec believes that the federal spending power should be limited solely to the matters listed as under exclusive or concurrent federal jurisdiction. However, it will be necessary to rule on the mode of compensation applicable to provinces that may eventually abstain.⁵⁵

The Prime Minister called, on behalf of Québec, for an unconditional transfer of funds spent by the federal government in sectors in which the provinces were already involved.

Thus, why should one not think of eliminating certain interventions in fields where the provinces have more or less similar programs which are better adapted to their needs? Why try to take on jobs which the government which is the nearest to the citizens can do both more economically and more efficiently? The desperate eagerness to mix in, and especially that everyone knows about it shows that there is here, at least as much for this as any other reasons, a great preoccupation with political gain. It is obviously an understandable preoccupation these days. But, it nevertheless remains that considerable sums of money devoted by the federal administration to often ephemeral programs, at

times even frankly improvised ones, bandaids without a future, which raise people's expectations which are then left unsatisfied only to automatically bounce back on provincial governments and risk deforming all their priorities. These considerable sums of money, according to us, could and should be unconditionally returned to the provinces.⁵⁶

In the same period, the federal government stated that the spending power should be better defined.⁵⁷

A year later, the Pépin-Robarts Commission proposed that the federal spending power be overseen by a new Upper House, made up of delegates representing the provincial governments, and submitted that the provinces "should have the right to opt out of any program and where appropriate to receive fiscal compensation."⁵⁸ The federal government did not act on the report.

At the Annual Premiers' Conference held in Charlottetown in 1984, Mr. Lévesque declared that limiting the exercise of the federal spending power was a priority.

We have lost count of the "national" projects that Ottawa intends to impose by using its spending power, on issues as varied as daycare, forests, parks, etc.

We are seeing a mutation, in the deep sense of the term, of what the essence of Canadian federalism has been these past few decades: the provinces' areas of jurisdiction are no longer ever considered exclusive by Ottawa, which arrogates the right to intervene for every purpose to impose ITS "national" standards in this field, supposedly for the greater good of all Canadians. [. . .]

The defence of provincial jurisdictions requires the effective exercise of the powers we possess, the complete occupation of our jurisdictions. For the federal offensive is always based, more or less, on the implicit postulate that the provinces are poorly fulfilling their responsibilities. There is a considerable challenge to be met, in the context of a long satisfactory fiscal distribution, to the detriment of the provinces. For the past few years, Ottawa has gradually but constantly reduced its financial transfers to the provinces. It uses the leeway thus acquired, not to reduce the size of its deficit, but to intervene in fields of provincial jurisdiction, by using its spending power. Limiting the exercise of this power, which is the preferred means of the federal offensive, has become a priority.⁵⁹

Under the leadership of Mr. Pierre Marc Johnson, the Government of Québec tabled a draft constitutional agreement which pointed out that the federal government's use of its spending power had adulterated the distribution of constitutional areas of jurisdiction and was one of the main reasons for Quebecers' dissatisfaction with Canadian federalism. The document recalled that successive Québec governments had always opposed the exercise of the spending power when the federal government used it to intervene in fields that exceeded its jurisdiction: those of municipal affairs, health and education, among others.

The draft agreement proposed a framework for the federal spending power on two levels:

[. . .] conditional grants to the provinces should be, as the federal government itself suggested in 1969, subject to the prior consent of a majority of provinces. In addition, any province that refuses these grants should receive fair compensation.

In matters of education and culture, [. . .] limits should be imposed on such interventions by major readjustments. Starting immediately, payments to individuals and institutions should not be made unless they have been the subject of prior agreement with the Government of Québec.⁶⁰

B. Illustration of Québec's position on education, health and social services

In 1977, after having announced a few years earlier that it was capping its contributions to the programs it had itself imposed on the provinces, the federal government changed the financing of hospital insurance, health insurance and post-secondary education programs by grouping them in a single account, called Established Programs Financing (EPF). Additional tax abatements replaced part of the cash transfers, but the formula used to calculate federal contributions was changed: they would no longer be calculated on the basis of the actual costs assumed by the provinces.

a) Health and social services

In the field of health and social services, Québec denounced the growing will of the federal government to pursue and even increase its intervention. In so doing, the federal government is placing Québec in an untenable position, obliging it either to allow federal encroachment in sectors within its jurisdiction, or to impose the cost of this double administration on the public. Québec asked the federal government to withdraw with financial compensation from programs that duplicated those already established and to stop intervening on health-related matters except at the express request of the provincial government. The Minister of Social Affairs stated this position as follows:

Several items on the agenda of this Conference indicate an intention by the government to pursue its intervention in the field of health, which is exclusively a provincial jurisdiction. [. . .]

Since the publication of the Lalonde document on the outlook for health, the merits of which are not in question here, the Department of National Health has done everything in its power to enter new or priority health sectors. [. . .]

By taking the initiative in determining the needs and solutions to be provided, it acts clearly in breach of the Canadian constitution. [. . .]

Faced with this invasion, the Government of Québec is faced with the increasingly embarrassing alternative of either giving ground, or making the public pay the cost of this double administration of health. [. . .]

It is also unfortunate to observe that programs funded directly by the federal

government as "local initiatives projects," [. . .] under the recently concluded federal-provincial agreement too often constitute direct intervention in the field of health or social services. Without questioning their validity, I must insist that these projects should in no case serve as an indirect means for the federal government to intervene in the creation and development of programs that otherwise would escape its jurisdiction.

Given this de facto situation, the Government of Québec wishes to inform the federal government that any renewal of the agreement concerning these projects or other similar projects such as "Canada Works" will have to exclude from its purview projects that overlap with activities in the health and social service sectors, and that it intends to submit to the Canadian government a proposal to withdraw from this part of the program by means of financial compensation, the conditions of which should take the economic context of each province into account.

Similarly, the federal government should also withdraw from programs and grants in the health field which are not affected by the financial arrangements. I am particularly thinking of the Health Resources Fund, where there is a risk that the amounts still available will not have been fully allocated when the Fund expires in 1980. The Government of Québec therefore demands that the amounts still available in the Health Resources Fund be turned over to the provincial governments unconditionally.

Thus, the Government of Canada should not initiate new programs, nor subsidize projects, nor publicly involve itself in a health-related matter except at the express request of the government of a province.⁶¹

b) Education

In matters of education and vocational training, the Québec government reiterated its demand for an unconditional transfer of the attendant funds.

Québec considers that unconditional transfer payments for post-secondary education, school fees and assistance to students are not negotiable, since they belong to the field of education, which comes under the provinces' exclusive jurisdiction. [. . .]

In the case of Québec, such training should be closely coordinated with other means of encouraging the economic and social development of Québec society. For this reason, Québec wishes to take charge of policy-directing and decision-making in the field of adult training, and repeats its request that the funds which the federal government devotes to adult vocational training in Québec be transferred to it.⁶²

Mr. Lévesque's government would continue, until the end of its mandate, to denounce federal intrusions in the fields of health and education.

We see a will to centralize powers in Ottawa, without precedent in modern Canada. [. . .] It must be foreseen that a large part of this movement will continue.

On this question, Québec's interest overlaps with that of the other provinces, for the sovereign exercise by all provinces of the areas of jurisdiction they have traditionally exercised under the BNA Act of 1867 and the decisions of the courts, is clearly being challenged. Ottawa, particularly using its unlimited spending power, has not only undertaken to alter to its advantage the distribution of powers within Canadian federalism, but is attacking the very nature of this system.

This federal offensive is particularly obvious when it affects the powers exclusively reserved to the provinces in three sectors at the heart of their jurisdiction: health, municipal affairs and education.⁶³

6. Second government of Mr. Robert Bourassa and government of Mr. Daniel Johnson (junior) (1985-1994)

A. General position regarding the federal spending power

When it took power in December 1985, Mr. Bourassa's government made the limitation of the federal spending power one of the five conditions for its endorsement of the Canadian constitution, Mr. Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, presented Québec's demands for limitation of the federal spending power as follows in his speech at Mont-Gabriel in May 1986.

Cultural security also signifies Quebec's ability to act alone in its fields of jurisdiction without interference from the federal government through its spending power. You are no doubt aware that this power allows Ottawa to spend sums of money in any area it wishes whether it falls under federal jurisdiction or not. At present, there is no exclusively provincial area of jurisdiction that is not susceptible in either a direct or indirect way to being affected by the federal spending power. The spending power has become a "sword of Damocles" hanging menacingly over any province wanting to plan its social, cultural or economic development. [. . .] Placing boundaries on the application of the spending power could be a major contribution to the amelioration of the Canadian federation.⁶⁴

In the same period, the MacDonald Report, while recommending that the federal spending power be preserved, recognized that it should be used prudently.⁶⁵

Further to constitutional negotiations, the Meech Lake Accord contained a provision (new section 106A of the Constitution Act, 1867) concerning a framework for the exercise of the federal spending power. The Meech Lake Accord was rejected in 1990.

In 1991, the Bélanger-Campeau Commission on the Political and Constitutional Future of Québec pointed out that the groups and individuals who commented on a solution that would consist in a new attempt at defining Québec's status within the Canadian federal system identified certain changes that had to be made. In particular, they called for

[. . .] a division of powers and responsibilities which assures Québec of exclusive authority over those matters and domains which already fall under its exclusive jurisdiction, which means among other things eliminating in these domains federal spending power and overlapping interventions.⁶⁶

For its part, the federal government, in September 1991, tabled a series of proposals, some of which concerned the federal spending power.⁶⁷ Québec specifically declared these proposals to be unacceptable.⁶⁸

The Beaudoin-Dobbie Committee submitted its report in February 1992. It made the following observation:

[. . .] Another source of tension within the Confederation is the use of the federal spending power in areas of exclusive provincial jurisdiction.

In response to these concerns, we will consider, in the context of our recommendations on jurisdictional change, the possibility of placing certain controls on the federal spending power through intergovernmental agreements.⁶⁹

The Committee submitted recommendations concerning existing shared-cost programs.

We recommend that the federal and provincial governments work together towards establishing procedures for implementing changes in terms and conditions of existing shared-cost programs. For example, we believe that one could consider fixing the program's terms and conditions under a binding intergovernmental agreement for a period of, for example, four to five years. In our view, such an approach would not undermine Parliament's authority while addressing many of the provincial governments' concerns.⁷⁰

Concerning new programs, the report recommended:

- i) that the Constitution Act, 1867 be amended, by adding a section stating that the Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a new Canada-wide shared-cost program that is established by the Government of Canada in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that meets the objectives of the new Canada-wide program; and
- ii) that any new Canada-wide shared-cost program be constitutionally protected from unilateral changes to the terms of the program over a jointly agreed-on period through the approval process for intergovernmental agreements.⁷¹

The Committee further proposed the insertion of a section on shared-cost programs immediately following section 106 of the Constitution Act, 1867.⁷²

Further to new constitutional negotiations, the Charlottetown Accord put forward a framework for some specific exercises of the federal spending power in the fields of culture, regional development and manpower.⁷³ The Accord also repeated the formula of the right of a province to opt out from jointly funded national programs that was found in the Meech Lake Accord (new section 106A of the Constitution Act, 1867). It also provided the basis for a general framework for the exercise of the federal spending power in sectors of exclusive provincial jurisdiction (new paragraph 37(1) of the Constitution Act, 1982).⁷⁴ Finally, mechanisms for agreements on withdrawal from programs or restriction of spending on the part of the federal government were provided in six areas to be declared as coming under exclusive provincial jurisdiction.⁷⁵ The Charlottetown Accord was rejected in Québec and Canadian referenda in October 1992.

In 1993, Mr. Daniel Johnson, later to become Prime Minister of Québec, declared that "federal encroachment is costing us a fortune. This is essentially what is giving us a \$30-billion-a-year federal deficit".⁷⁶

Québec nevertheless continued to call for a limitation of the federal spending power and respect for its areas of jurisdiction. Thus, Mr. Johnson wrote in 1994:

There is no doubt that the elimination of overlaps and duplications is one of the priority means at our disposal to optimize the use of government budgets and foster public confidence in the management of public funds. In this sense, we share the objectives you evoke to the effect of making policies and programs more efficient and accessible and agreeing on the level of government in the best position to provide a service, all the while considering each province's priorities and special conditions.

But above all, the reduction of overlaps must be consistent with a framework for the exercise of the federal spending power, if we wish to allow the two governments to exercise their responsibilities as efficiently as possible. This objective should also contribute to each government acting clearly within the areas of jurisdiction assigned to it by the Constitution. Certain major initiatives of the federal government in fields of provincial responsibility such as health and education appear to me to be difficult to reconcile with the objectives of efficiency and subsidiarity which should prevail, especially in a context of scarce financial resources.⁷⁷

B. Illustration of Québec's position on education, health and social services

During this period, the federal government pursued its disengagement from the financing of health and post-secondary education. In 1986, Bill C-96 partially de-indexed the rate of increase of federal transfer payments. The federal government tended to withdraw gradually from transfers to the provinces under Established Programs Financing (EPF) to invest directly and unilaterally in specific clienteles and institutions by setting up various programs in the education and social policy fields.

a) Education

The federal government stepped up its interventions in the education sector. In 1988, for example, three programs were created: the Canada Scholarships Program (under the Innov-Action program), Canada's Network of Centres of Excellence and the National Literacy Program. Similarly, in 1990, Employment and Immigration Canada launched the Education Initiative Project, subsequently renamed "Stay-in-School," including, among other things, grants to school boards that submitted eligible projects.

The federal government also attempted on several occasions to impose national standards in this sector. Thus, in 1986, Bill C-96 proposed to tie the funding of post-secondary education to the introduction of national objectives. The united opposition of the provinces, through the Council of Ministers of Education of Canada, prevented such a linkage. Similarly, in its Throne Speech of May 1991, the federal government announced its intention to establish Canada-wide objectives in education for the year 2000, with the support and cooperation of the provinces. On May 29, 1991, Québec's National Assembly adopted the following resolution:

That the National Assembly condemn the unacceptable intention of the federal government, expressed in the Throne Speech, to the effect of interfering in the education and manpower training sectors which fall under Québec's exclusive jurisdiction, particularly by the designation of a Minister responsible for the setting of pan-national objectives in these fields and that it ask the Government of Québec to implement all necessary means to put a stop to this interference.⁷⁸

b) Health and social services

In the context of the reform of health and social services implemented in the early 90s, the Minister of Health and Social Services, Mr. Marc-Yvan Côté, called for an increase in federal transfer payments to the EPF and the elimination of the standards tied to financial and fiscal transfers. He very clearly reaffirmed exclusive provincial jurisdiction in these sectors.

Social affairs and health irrefutably come under the exclusive jurisdiction of the province by virtue of the Canadian Constitution.

Social affairs and health are essential sectors which call upon a society's deepest values and in this sense should reflect the specificity of Québec society. [. . .]

The health and social affairs sectors up to now have been under exclusive provincial jurisdiction and, in the best interest of Quebecers, they are there to stay.⁷⁹

7. Governments of Mr. Jacques Parizeau and Mr. Lucien Bouchard (1994-)

A. General position regarding the federal spending power

In 1995, the federal government replaced the Canada Assistance Plan (CAP) and Established

Programs Financing (EPF) with the Canada Health and Social Transfer. On the pretext of an increase in the latitude of the provinces, which nevertheless had to continue to comply with the five national health standards and non-assignment of residence in social matters, the federal government applied severe cuts under this program in transfer payments to the provinces.

Ms Pauline Marois, Minister of Finance, after explaining the disastrous effects of federal cuts in transfers to the provinces on the funding of health, higher education, social services and income security programs, declared that the funding framework had become unacceptable. She denounced the attitude of the federal government which, while withdrawing massively from funding, maintained its national health standards and sought to impose new ones in other social programs.

In this context, Ms Marois called on the federal government

[. . .] to withdraw from the funding of social programs, and transfer to Québec the tax points serving to finance its intervention in this field. I will therefore propose to Mr. Martin that, as of 1996-1997, he replace his current financial contribution to social programs with a definitive transfer of tax points to Québec.⁸⁰

In February 1996, on the occasion of the Throne Speech, the federal government undertook to stop using its spending power to create new shared-cost programs in areas of exclusive provincial jurisdiction without the consent of a majority of the provinces. It also undertook to ensure that any new program be designed so that the non-participating provinces would be compensated, provided they establish equivalent or comparable initiatives. However, in the September 1997 Throne Speech, the federal government announced a series of unilateral initiatives in the fields of education, health and social services.

In December 1997, the Minister responsible for Canadian Intergovernmental Affairs, Mr. Jacques Brassard, spelled out Québec's orientations in intergovernmental relations. Québec wishes to put an end to federal interventions in its jurisdictions by withdrawal, with full fiscal compensation, from any new exercise by the federal government of its spending power:

[. . .] the federal government is conducting a policy that it describes as administrative reform of the federation. One of the primary elements of this reform is to crystallize and legitimize the reinforcement of role it has arrogated to itself in the field of social policies, a sector which falls under Québec's jurisdiction. The provinces of English Canada are participating actively in this centralization by agreeing to recognize formally that Ottawa has a leading role in these matters [. . .].

[. . .] The imminence of a budget surplus in Ottawa is already provoking a return to an interventionist federal government creating new overlaps and duplications. In such a context, the Government of Québec will firmly defend its autonomy and its primary role in the sectors under its responsibility. Therefore:

[. . .] Québec will insist on respect for its constitutional jurisdictions and will demand their full exercise; it will continue to denounce the federal government's

interference and will insist on full financial compensation in the form of tax points, particularly in the case of any new agreement or federal initiative in a sector within Québec's jurisdiction.

[. . .] in the event of the federal government's disengagement in other sectors, Québec will ask, if the case arises, that a transfer of responsibilities to Québec be accompanied by fair compensation.⁸¹

Finally, in the speech he delivered upon the closing of the work of the Committee on Institutions concerning the Calgary Declaration, Prime Minister Bouchard reaffirmed the vital importance for Québec to preserve its jurisdictions and its intention to obtain a right to opt out with fair compensation in the event of federal initiatives in these fields.

If one thing is essential for Québec, it is the respect for Québec's exclusive areas of jurisdiction, particularly in health, income security, education and family policy. For the past thirty years, the federal government has sought to interfere in Québec's areas of jurisdiction. It has essentially done this through what is called a spending power that Québec has never wanted to recognize, seeking to protect its exclusive areas of jurisdiction. [. . .]

It would be necessary to provide that each province could opt out of a federal initiative in its jurisdictions, in consideration of fair financial compensation. This right to opt out has always been at the centre of Québec-Ottawa discussions. In 1964, Prime Minister Lesage had obtained such a right from Prime Minister Pearson for 29 federal programs. There is not a word about this in the Calgary Declaration.⁸²

B. Illustration of Québec's position on education, health and social services

a) New federal interventions

In the education sector, the main federal initiative consists of the creation of Millennium Scholarships. Evoked in the September 1997 Throne Speech and announced in the February 1998 federal budget, the Act instituting the Canadian Millennium Scholarship Foundation received Royal assent on June 18, 1998.⁸³

As soon as it was informed of the federal project, the Government of Québec, supported by many leaders of the Québec educational community, took a stand against this new intrusion by the central power and stated its intention to opt out of an eventual program with full compensation.⁸⁴ On March 30, 1998, Mr. Bouchard, during a meeting on this issue with the Prime Minister of Canada, Mr. Jean Chrétien, proposed to amend the bill to grant the provinces a right to opt out with compensation.

Opting out with compensation

46.1 When a province has constituted and administers a student financial aid program to ensure equality of opportunity with respect to postsecondary education, the ministers

must, upon request by that province, negotiate with it to conclude an agreement for the purpose of providing it with equitable financial compensation in lieu of the activities of the Foundation in that province.⁸⁵

Negotiations began but failed. The House of Commons adopted the bill on May 27, 1998 without amendment regarding the Foundation, despite the Québec consensus particularly manifested by the unanimous adoption of a National Assembly resolution proposing legislative amendments more in accordance with Québec's interests.

For the benefit of Québec students, the National Assembly urgently asks the Federal Government and the Québec Government to resume the negotiations regarding the millennium scholarship in order that an agreement on legislative amendments respecting the following principles may be reached:

- a) The part granted each year to Québec students is determined by means of a formula based on demographic parameters;
- b) Québec selects the students who shall receive a scholarship;
- c) The scholarships are forwarded to the recipients in such a manner so as to avoid all duplication and to ensure the necessary visibility to the Federal Government.

Furthermore, the National Assembly acknowledges the Québec Government's intention to allocate the amounts thus saved in its scholarship programme to the funding of colleges and universities.⁸⁶

The federal government's attitude on this issue poses even more of a problem, since this is a sector in which Québec, since 1964, has exercised an opting-out right allowing it to retain control of its student aid program, which already includes a scholarship program based on eligibility criteria determined according to Québec's priorities.

The 1997 Throne Speech also announced the creation of the Canada Foundation for Innovation infringing on Québec's jurisdiction in education and health. In December 1997, the Québec Ministers of Education and Health reminded the federal government that Québec intends to remain solely responsible for the funding and development of university research in Québec.⁸⁷

In the field of health, the federal government's Throne Speech of September 1997 reaffirmed its intention to intervene in this sector.

The Government has a leadership role in preserving and enhancing medicare. [. . .]
There are steps that we can and will take to lead the efforts by all governments.[. . .]

Working with its partners, the Government will undertake the following initiatives:

- It will take measures to support Canadians in responding to the expanding needs for home care and community care.
- It will develop a national plan, timetable and a fiscal framework for providing Canadians with better access to medically necessary drugs.
- It will improve the quality and effectiveness of health services across Canada by establishing the Health Transition Fund to help the provincial governments innovate in the areas of primary care and provide more integration in the delivery of health services, home care and pharmacare.⁸⁸

Mr. Jacques Brassard, Minister responsible for Canadian Intergovernmental Affairs, denounced these federal interventions.⁸⁹

b) Canadian Social Union

At the 1995 Annual Premiers' Conference, the Premiers of provinces other than Québec created the Interprovincial Council of Ministers on Social Policy Reform and Renewal. In December 1995, this Council submitted a working paper which reflected the preoccupations of these provinces in social matters. At the Annual Conference held in Jasper in August 1996, these provincial Premiers expanded their approach by setting up a Federal-Provincial-Territorial Council on Social Policy Renewal responsible for examining, among other things, the creation of a national child benefit and the role that the provinces could play in defining national health standards.

The reaction of Mr. Bouchard's government to this initiative by the provinces conformed to the positions defended by all previous Québec governments: far from seeking a forum whereby the federal government could normalize its interventions in Québec's jurisdictions, Québec called for the federal government's withdrawal from the social policy field. It asked that it be transferred the fiscal resources necessary to implement all its social programs:

Most of the report's recommendations concur as to the standardization of social policies across Canada and thus offer the federal government an opportunity to legitimize the increased role, without constitutional foundation, that it wishes to assume. [. . .] Québec cannot engage in intergovernmental processes of a decisional character which would have the effect of subjecting it to standards to which Québec would not have consented, in sectors that are within its jurisdiction. [. . .]

What we are being asked is to renounce the capacity that Québec has always demanded to determine its own priorities and allocate Quebecers' taxes to their specific needs. This is a direct attack on the social solidarity of Quebecers.⁹⁰

On the issue of the national child benefit, the Prime Minister declared that

Québec spends \$3 billion on its children's programs, and we are about to design a unified program. Accepting the Canada-wide program would be equivalent to dumping the taxes of Quebecers into a common pot and renouncing the allocation of the fund required for Quebecers' needs and priorities.⁹¹

While in 1996, the other Canadian provinces seemed to define "rebalancing" of the federation as a form of federal-provincial collaboration in many sectors of activity in which the federal government has insinuated itself through its spending power, Québec considered, on the contrary, that it had to maintain total control of its areas of jurisdiction:

The Government has neither the intention nor the mandate to abandon any dimension of Québec's constitutional jurisdiction, regardless of whether the operation envisioned is of a constitutional or administrative nature. [. . .]

Québec governments, regardless of their option regarding Québec's status, have long sought to strengthen these jurisdictions to favour control by the Québec people of its social, economic and cultural development. [. . .]

Québec cannot commit itself to a rebalancing process with general orientations and specific measures that lead to the abandonment of fundamental demands based on the defence of its jurisdictions and their gradual erosion by intergovernmental and administrative means.⁹²

Québec reiterated its position at the Annual Premiers' Conference in St. Andrews in August 1997, expressing its opposition to the intergovernmental mechanism proposed by the provinces for the development of national standards for social programs, jointly with the federal government:

Québec intends to maintain control over its social policy directions and choice of priorities, as its government recently showed with its family policy, with the implementation of its pharmacare program and with an alimony payment collection system. The Québec government is the best positioned government to meet the specific needs of Quebecers.

An intergovernmental mechanism to formulate national standards applicable to social programs would thus pose a direct threat to Québec's existing prerogative and responsibilities in defining and managing its social policy, exercised under its exclusive jurisdiction in this field. The fact is that such a mechanism would impede Québec's leeway, i.e. its current capacity to set its own policy directions, priorities and terms for social programs financed by Québec taxpayers.

Another consequence of such a mechanism would be the admission that the federal government has responsibilities in defining social policy that are not recognized in the Constitution. It would lend legitimacy to the federal government's long-standing claims in this field, which are clearly at odds with the Constitution.⁹³

Federal-provincial collaboration proposed by the provincial Premiers has the effect of preventing Québec from creating and maintaining its own social programs, as shown by the issue of the national child benefit:

[. . .] In spite of Québec's objections, the provinces of English Canada and the federal government have imposed on Québec standards for the "national" child benefit. Ottawa has refused to act on Québec's request to transfer its portion of federal funds allocated to the "national" child benefit, for inclusion in Québec's unified child allowance. This federal refusal gave to Québec no choice other than to significantly readjust ex post its unified child allowance, originally set up on the basis of Québec's jurisdiction and family policy.

Indeed, acting within its jurisdiction, Québec had in the meantime prepared a family policy in good faith but was then forced, because of the terms and conditions of the child benefit imposed upon it, to make major adjustments to its unified child allowance, an important aspect of its family policy. Accordingly, even before an intergovernmental mechanism on social policy has been sketched out, national standards have been imposed on Québec in a field that lies within its jurisdiction. Will the next stage involve imposing national standards on Québec regarding the pharmacare plan it has just implemented, in accordance with its jurisdiction over health? Is Québec to be forced once again to accept federal social policy standards?⁹⁴

In this context, in order to orient the debates in the direction of Québec's interests and thus limit the duplications resulting from the federal spending power, the Prime Minister of Québec indicated, at the First Ministers' meeting held in Ottawa in December 1997, that he would participate in a working group on the Canadian Social Union if the provinces accepted three conditions in accordance with the positions defended by Québec governments regarding the federal spending power:

1. The participants must express an interest in the recognition of a province's unconditional right to withdraw with full compensation in respect of any measure or matter likely to affect an area of provincial jurisdiction and agree that the definition of this right of withdrawal will be a key objective of talks on the umbrella agreement.
2. During discussions on such an umbrella agreement, all participants, including the federal government, must agree to a moratorium on any new federal government initiative or measure likely to affect an area of provincial jurisdiction. [. . .]
3. The Québec proposal must in no way be interpreted as direct or indirect recognition of federal spending power or any federal role whatsoever in the realm of social policy. Moreover, Québec reaffirms its historic position concerning respect for its fields of jurisdiction.⁹⁵

The other Premiers and the Prime Minister of Canada refused to agree to discuss the right to opt out. The Conference ended with the provinces unable to obtain any commitment whatsoever from the federal government in favour of re-establishing the level of transfer payments necessary to maintain

social programs, despite their intention to define the federal spending power better within the framework of a "Canadian social union."

In March 1998, the Federal-Provincial-Territorial Council of Ministers on Social Policy Renewal met to undertake negotiations on an eventual "Framework agreement on Canada's Social Union." One month later, it was the turn of the Ministers responsible for these discussions to meet in Toronto. On this occasion, the Minister responsible for Canadian Intergovernmental Affairs, Mr. Jacques Brassard, reiterated the conditions laid down by Mr. Bouchard in December.

[Québec's] position is clear: Québec requests that the umbrella agreement on the social union recognize its historic position by providing for an unconditional right to opt out with full financial compensation in respect of **any new initiative or new federal program, whether jointly funded or not, in the sectors of social programs within the jurisdiction of the provinces.**⁹⁶

After two months of discussions, the provinces, except Québec, came to a common position on the question of the limitation of the federal spending power, which is close to Québec's historic position. A few days later, at a federal-provincial meeting of the Ministers responsible for negotiating the umbrella agreement, the federal government refused to react officially to the provinces' proposal.

CONCLUSION

For more than half a century, Québec has contested the existence of the federal government's spending power. Failing outright abolition of this power, the Government of Québec, through its successive Prime Ministers, has demanded a rigorous limitation on it in areas falling under the exclusive jurisdiction of the National Assembly, via a right to opt out with full compensation. Regardless of their political allegiance, all Québec governments without exception have expressed their commitment to defend the integrity of Québec's legislative jurisdictions and its capacity to determine policies in its best interest, particularly in matters of education, health and social services.

After this half-century of incessant struggle, what has Québec obtained? With the exception of a brief period in the early Sixties when the federal government accepted that Québec shape its own destiny by withdrawing from shared-cost programs, Québec's demands concerning the federal spending power have been each time rejected by Ottawa, if not by certain provinces.

In the Throne Speech of February 1996, the federal government undertook to limit the exercise of its spending power. Over the past two years, however, through numerous new forms of interference in Québec's jurisdictions, it has shown how weak this commitment is and how easy it is to get around it through direct and unilateral interventions. The Millennium Scholarships, the Canada-wide child benefit, the Canada Foundation for Innovation and the projected drug insurance program are only a few examples of such interventions. This federal offensive is reflected in a discourse that adulterates the notion of exclusive provincial jurisdictions.

The federal government's attitude and the direction it wants to imprint on Canadian federalism undermine the very principle of this system. The current situation makes it all the more important for

Québec to reiterate its historic position concerning the federal spending power.

1. Memorandum submitted to the Dominion-Provincial Constitutional Conference by Mr. Maurice Duplessis, January 10-12, 1950, p. 16 .
2. Brief by the Province of Québec submitted by Mr. Maurice Duplessis, Federal-Provincial Conference, 1955, p 6-7.
3. Memorandum submitted to the Dominion-Provincial Conference by Mr. Maurice Duplessis, April 25, 1946, p. 365.
4. Ibid., p. 362.
5. In 1950, Québec refused to accept conditional grants from the federal government for construction of the Trans-Canada Highway.
6. Brief by the Province of Québec submitted by Mr. Maurice Duplessis, Federal-Provincial Conference, 1955, p. 3.
7. Dominion and Provincial Submissions and Plenary Conference Discussions, Ottawa, 1946, p. 362.
8. Report of the Royal Commission of Inquiry on Constitutional Problems, Province of Québec, 1956, vol. I, p. 171-173.
9. Royal Commission on National Development in the Arts, Letters and Sciences (Massey Commission), whose report was published in 1951.
10. La Presse, September 17, 1959.
11. In 1967, this transfer of tax points was increased and applied to all provinces by means of the postsecondary education funding program. In 1977, this program was included in the "Established Programs Financing" account.
12. Speech by Mr. Jean Lesage, University of Moncton, May 17, 1964, p. 2.
13. Statement by Mr. Jean Lesage, Dominion-Provincial Conference, Ottawa, July 25-27, 1960, p. 129-130.

14. Speech by Mr. Jean Lesage, University of Moncton, May 17, 1964, pp. 2-3.
15. Opening Statement by Mr. Jean Lesage, Federal-Provincial Conference, July 19, 1965, p. 27.
16. Ibid., p. 16.
17. Brief tabled by the Government of Québec, Conference on poverty, Ottawa, December 7-10, 1965, p. 19, 30.
18. Statement by Mr. Jean Lesage, Federal-Provincial Conference, March 31, 1964, p. 31.
19. Ibid., p. 26-28.
20. Statement by Mr. Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p. 49.
21. Statement by Mr. Jean Lesage, Dominion-Provincial Conference, Ottawa, July 25-27, 1960, p. 130.
22. Statement by Mr. Jean Lesage, Federal-Provincial Conference, Ottawa, November 26-29, 1963, p. 46-47.
23. Debates of the House of Commons, March 16, 1964, p. 973.
24. Statement by Mr. Jean Lesage, Federal-Provincial Conference, Québec, March 31-April 1, 1964, p. 15-17.
25. The tax abatement obtained by Québec was equivalent to 20 income tax points (14 for hospitalization insurance, 4 for social welfare and one each for public health and technical training).
26. Establishment Programs Act (Interim Arrangements), S.C. 1964-65, c. 54.
27. Statement by Mr. Jean Lesage, Federal-Provincial Conference, July 19, 1965, p. 23
28. Statement by Mr. Daniel Johnson at the Fourth Meeting of the Tax Structure Committee, Major points in Québec's Brief to the Fourth Meeting of the Tax Structure Committee, September 13, 1966, p. 2.
29. Statement by Mr. Daniel Johnson, Federal-Provincial Tax Structure Committee, Ottawa, September 14, 1966, p. 50.

30. Québec's Brief on the Constitutional Question, Intergovernmental Conference, Ottawa, February 5-7, 1968, p. 11-13.
31. Opining statement by Mr. Jean-Jacques Bertrand, Canadian Constitutional Conference, Ottawa, February 10, 1969, p. 10.
32. Statement by Mr. Jean-Jacques Bertrand, Federal-Provincial Conference, November 4 and 5, 1968, p. 10-11.
33. Preliminary Statement by Mr. Daniel Johnson, "Confederation of Tomorrow" Conference, Toronto, November 27-30, 1967, p. 16-17.
34. Comments by Mr. Jean-Paul Cloutier, Minister of Family and Social Welfare, on the points brought out in the agenda of the Federal-Provincial Conference of Health Ministers, 1968.
35. Statement by Mr. Jean-Jacques Bertrand, Constitutional Conference, Ottawa, December 8-10, 1969, p. 18.
36. Statement by Mr. Daniel Johnson, Federal-Provincial Conference, October 24-28, 1966, Appendix D, p. 1-2.
37. S.C. 1966-67, c. 45.
38. S.C. 1966-67, c. 64.
39. See above, note 27.
40. Statement by Mr. Jean-Paul Cloutier at the Federal-Provincial Conference of Health Ministers, Ottawa, April 17 and 18, 1967, p. 1.
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42. Ibid., p. 201, recommandation I.93.
43. Le Devoir, April 9, 1969.
44. Statement by Mr. Robert Bourassa, Prime Minister and Minister of Finance, Constitutional

Conference, Ottawa, September 14 and 15, 1970, p 17.

45. Ibid., p. 16.
46. GOVERNMENT OF QUÉBEC, Statements by Mr. Robert Bourassa, Premiers' Conference, Ottawa, November 15-17, 1971, p. 40.
47. Opening speech, Debates of the National Assembly, March 15, 1973, p. 1.
48. Statement by Mr. Robert Bourassa, Federal-Provincial Conference of First Ministers, Ottawa, June 14 and 15, 1976.
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50. Statement by Mr. Robert Bourassa, Constitutional Conference, Ottawa, September 14 and 15, 1970, p. 10.
51. Statement by Mr. Claude Castonguay, Minister of Health, Health Ministers' Conference, December 9-11, 1970, appendix 3, p. 5.
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