

## GOVERNMENT OF DANIEL JOHNSON, Sr.

(JUNE 16, 1966 TO SEPTEMBER 26, 1968)



Jean-Paul Bôdy

Source: Archives nationales du Québec

### ••• Status of Québec

69. A new Constitution should be designed so that Canada is not solely a federation of ten provinces, but a federation of two nations equal in law and in fact. From an institutional standpoint, a truly bi-national order should be established for the entire country, where the agents of the two cultural communities could work together, on an equal footing, to manage their common interests.<sup>80</sup>
70. The object of the Constitution must not solely be to federate territories, but also to associate as equals two linguistic and cultural communities, two founding peoples, two societies, two nations in the sociological sense of the term. A Canadian constitution must be the product of an agreement

between the two nations that make up the people of Canada, and must recognize the principle of the legal equality of the two cultural communities.<sup>81</sup>

71. The Canadian Constitution must take into account the fact that Québec has a special role to play in achieving cultural equality.<sup>82</sup>
72. French Canadians, drawing on their majority situation in Québec, must be able to develop structures, institutions and an environment in Québec that are perfectly attuned to their culture and their aspirations.<sup>83</sup>

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*Québec, the home of the French Canadian nation:  
See paragraph 77.*

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73. Québec prefers to live within a constitutional system that is sufficiently decentralized to take Québec's situation into account, though without preventing other provinces from leaving to the federal government, or carrying out jointly with it, those responsibilities they do not wish to assume.<sup>84</sup>

### ••• Constitutional reform process

74. If it is to be viable, the Canada of tomorrow must be founded on a new constitution [...]. The constitution must allow for the association of two societies, their cooperation within common institutions, the respect of fundamental collective rights and the normal aspirations of each society.<sup>85</sup>

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80. Daniel Johnson, *Égalité ou indépendance, 25 ans plus tard*, Montréal, VLB éditeur, 1990, see part three entitled "Une constitution nouvelle."

81. Opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, Office d'information et de publicité du Québec, p. 63 (See part 2 of this document).

82. Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968. These proposals had been approved by Daniel Johnson (See *Les positions traditionnelles du Québec sur le partage des pouvoirs 1900-1976*, gouvernement du Québec, ministère des Affaires intergouvernementales, Éditeur officiel du Québec, 1978, p.9).

83. Opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 57 (See part 2 of this document).

84. *Ibid.*, p. 59-60.

85. Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 42 (quotation).

75. The new constitutional proposal must have four objectives: 1) clearly define the guiding principles of political life in Canada; 2) establish a new distribution of powers and resources that will allow the French Canadian nation to flourish and English Canada to develop freely; 3) institutionalize or implement intergovernmental mechanisms for consultation, coordination and action; 4) change the way certain existing Canadian institutions and structures operate, modernize others and create new ones so that, overall, they reflect Canada's bi-national reality.<sup>86</sup>
76. Canada should call itself "Canadian Union" and should eventually become a republic.<sup>87</sup>

••• **Distribution of powers**

a) General principles

77. The equality that must be established between Canada's two cultural communities depends not only on a territorial extension of bilingualism, but even more on greater powers for Québec, the home of the French Canadian nation.<sup>88</sup>
78. To ensure the equality of the French Canadian nation, Québec needs greater powers. It wants to make its own decisions in certain areas: 1) development of its human resources (i.e. every aspect of education, social security and health); 2) economic affirmation (i.e. the power to implement economic

and financial mechanisms); 3) cultural expression (arts, letters and the French language); 4) the influence of the Québec community.<sup>89</sup>

79. Québec is seeking greater decentralization of powers than currently exists.<sup>90</sup> The Québec government proposes a new distribution of powers whereby all provinces would initially be attributed identical constitutional powers, and a constitutional provision would allow administrative or legislative delegation of powers to the federal government. The provinces themselves, under the new system, would decide the effective extent of their own responsibilities [...]. We feel such a situation would not be incompatible with federalism and such solutions should be embraced if they become necessary because of the sociological reality of the country.<sup>91</sup>
80. Québec wants to strip Ottawa of the ability to constantly intervene in provincial affairs by virtue of what are called indefinitely extensible powers.<sup>92</sup>
81. The Constitution should make formal provisions for the delegation of legislative powers.<sup>93</sup>

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*Charter of human rights and distribution of powers:  
See paragraphs 88 and 90.*

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b) Sectorial jurisdictions

82. Québec considers the following sectors to be within its exclusive jurisdiction:

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86. Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 43 (quotation).

87. Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

88. Opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 64 (See part 2 of this document).

89. Statement by Daniel Johnson, fourth meeting of the Federal-Provincial Tax System Committee, Ottawa, September 14-15, 1966 in *Le gouvernement du Québec et la Constitution*, 1968, p. 4; see also the preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 45.

90. *Ibid.*, p. 44 et seq.

91. *Ibid.*, p. 47 (quotation); see also the opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 59-60 (See part 2 of this document).

92. Speech by Daniel Johnson, Union nationale benefit dinner, Montréal, February 25, 1968.

93. Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

- culture, adult education, university research<sup>94</sup>, vocational training programs, cooperative training programs and training programs for the jobless<sup>95</sup>, urban development and housing, municipal structure, municipal powers and land use planning.<sup>96</sup>
83. The federal government must not have sole jurisdiction over the allocation of broadcast frequencies. Québec cannot tolerate much longer being excluded from an area in which its vital interest is so clear.<sup>97</sup>
84. As regards sectorial jurisdictions, Québec's constitutional demands can be expressed as follows<sup>98</sup>:
- i) In addition to agriculture and immigration, statistics, the census, bankruptcy, radio, television and film, farm products marketing, food and drugs should be areas of joint jurisdiction. In the event of conflict, priority should be given, on a case by case basis, either to Union (federal) legislation, or State (provincial) legislation.
  - ii) Education (in all its forms, at every level) and social security (including all social allowances, old age pensions, family allowances, health and hospitals, manpower placement and training) should be assigned to the provinces exclusively.
  - iii) The following areas should also be placed under exclusive provincial jurisdiction: divorce; business incorporation (except those mentioned as being under federal jurisdiction);
- the securities industry and control of financial institutions other than banks; labour relations and working conditions for all companies doing business within a province's borders; road transportation; integration of immigrants; public works within a province's borders (except those relating to an area of federal jurisdiction); rehabilitation of inmates; exploration for, conservation and development of resources; land use planning, municipal organization, urban planning, urban development and housing; recreation, leisure and sports.
- iv) It should be recognized that the provinces have the authority to negotiate and sign agreements with foreign governments on matters within their internal jurisdiction. Provincial governments should be regularly invited to participate in Canadian delegations at international conferences and meetings of international organizations to which Canada belongs and which affect areas of provincial jurisdiction. Similarly, the provinces should have the right to attend international conferences of interest to them but in which Canada does not participate. In addition, they should have a greater role in foreign aid.<sup>99</sup>
  - v) The provinces should have access to all sources of tax revenue, but property taxes and succession duties should be reserved for them exclusively.

94. Statement by Daniel Johnson, Federal-Provincial First Ministers Conference, Ottawa, October 24-28, 1966, p. 25-27.

95. Declaration by Daniel Johnson, meeting of the Tax System Committee, October 26, 1966, p. 63.

96. Statement by Daniel Johnson, Federal-Provincial Conference on Housing and Urban Development, Ottawa, December 11-12, 1967, p. 53, Privy Council Office, Ottawa, 1968.

97. Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 81.

98. Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

99. See also Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 79 and 80.

- vi) The provinces should be the owners of the public domain, which should extend to the continental shelf. They should have unlimited expropriation powers, except over federal property.
85. There are two main reasons why the Québec government is so insistent on regaining full control over social security: first, because the presence of two governments in this field prevents effective social security planning, allows for contradictions between various programs and leads to administrative duplication and waste; second, because social security measures affect the nation's vitality as a society.<sup>100</sup>

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*Control over expenses in Québec's sectors of jurisdiction: See paragraph 99.*

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c) *Unilateral powers*

86. The federal Parliament's reserve and disallowance powers and the declaratory power should be eliminated. The residuary power should be transferred to the provinces.<sup>101</sup>
87. The federal spending power should be limited to federal matters alone. However, unconditional grants could be paid to provinces either according to a general equalization formula or to stabilize their revenue.<sup>102</sup>

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*Shared-cost programs: See paragraphs 99-101.*

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••• **Individual and language rights**

88. The new Constitution must include a Charter of human rights applying to the constitutional powers of the central government. For its part, the Québec government intends to add a Charter of human rights to the Constitution of Québec which would apply to areas of Québec jurisdiction.<sup>103</sup>
89. In a country like ours, it is fundamental that the Constitution recognize the collective rights of the two cultural communities [...]. We do not want to impose our language indiscriminately on all Canadians, but we do want French Canadians, wherever they are in sufficient numbers, to be able to serve their country and be served in their language, as full-fledged citizens.<sup>104</sup>
90. A distinction must be made between individual rights and collective rights. The former are within provincial jurisdiction (civil rights). That is why Québec intends to incorporate a Charter of human rights into its own Constitution.<sup>105</sup>
91. As for collective rights (rights of language minorities), Québec agrees that they be protected in the Constitution. But it considers it is even more pressing and would be more effective to embody them in federal and provincial institutions.<sup>106</sup>

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100. See also Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 76 (quotation).

101. Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 45.

102. Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 75 and seq. See also working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

103. Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 44 (quotation).

104. Opening statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 22 (quotation).

105. Opening statement by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 61 (See part 2 of this document).

106. *Ibid.*, p. 61.

92. In a unitary country with a homogeneous society, declarations of rights can be seen as summations of the moral philosophy accepted by the entire population, and the rights of citizens can be derived therefrom. The result is to entrench in the Constitution a certain homogeneity of ethical concepts whose application is the responsibility of the courts. We feel that in a federal system and particularly in the case of Canada, it would be a serious political mistake to proceed in that way. Québec's civil law tradition and the way in which it recognizes and protects fundamental rights are in fact significantly different from the procedure in common law courts. If therefore we contemplate a declaration of rights that is so basic that the highest constitutional court in Canada must make these rights explicit, we are obliged to demand that the formation of a constitutional court be examined first.<sup>107</sup>

93. The issue of fundamental rights cannot be resolved without agreement on certain basic reforms, in particular the creation of a genuine constitutional court.<sup>108</sup>

••• **Institutions**

94. The Constitution should provide for the establishment of a constitutional

court of which at least 2/3 of whose judges would be appointed by the provinces.<sup>109</sup> The composition of this court should reflect the federal character of common institutions and the Canadian cultural duality.<sup>110</sup>

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*Constitutional court and charter of human rights:  
See paragraphs 92-93.*

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95. The provinces should be responsible for the establishment of high courts and the appointment of their judges, both for the administration of federal and provincial laws.<sup>111</sup>

96. Québec requests the institutionalization of federal-provincial and inter-provincial conferences.<sup>112</sup>

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*Intergovernmental machinery: See also paragraph 75.*

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97. It would be useful to examine the possibility of transforming the existing Senate into a genuine federal House, with a bi-national character.<sup>113</sup>

98. The composition of the Bureau of Broadcast Governors and the Canadian Broadcasting Corporation should better reflect the bicultural reality of the country. It is therefore important that Québec itself appoint a proportion, to be determined, of the members of the boards of directors of these agencies.<sup>114</sup>

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*Institutional reform: See also paragraph 75.*

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107. Initial reactions of the Québec government to the White Paper tabled in the House of Commons by Pierre Elliott Trudeau, federal Minister of Justice, February 1, 1968, p. 4 (quotation).

108. Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 93 and seq., especially p. 98.

109. Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

110. Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 50.

111. Working paper submitted by Québec to the Standing Committee of Officials on the Constitutional Conference, July 17, 1968.

112. Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 48 (quotation).

113. *Ibid.*, p. 50 (quotation).

114. Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 81.

••• Intergovernmental policy

*Financial aspects of federalism*

99. Québec should have sole responsibility within its borders for public spending on all forms of education, old age security, family allowances, health, manpower training and placement, regional development and, in particular, assistance programs for municipalities, research and the fine arts as well as culture and, in general, any other socio-cultural service within the jurisdiction of Québec. Existing federal programs in these areas would be assumed by Québec, which, if necessary, would maintain their transferable nature.<sup>115</sup>
100. Québec has no intention of renewing the joint programs from which it has withdrawn. Nor does it plan to enter into new joint programs dealing with areas of exclusive provincial jurisdiction. Instead, it will demand unconditional financial compensation.<sup>116</sup>
101. Joint programs are an obstacle to the free development of Québec society. They impose priorities that could conflict with those it would otherwise

establish, not to mention that they reduce its real budgetary independence [...]. For a nation like ours, joint programs freeze our fiscal resources and deprive Québec of total control over areas of activity that by law lie within its jurisdiction. In general, then, there is an incompatibility between the system of joint programs and the French Canadian nation's efforts to achieve its essential objectives.<sup>117</sup>

102. Québec demands a net increase in resources that enable it to carry out its constitutional responsibilities.<sup>118</sup> Québec demands 100% use of the three major direct taxes: personal income taxes, corporate income taxes and succession duties. This demand is based on a transfer of tax fields from the federal government to the provinces and on the repatriation of federal programs in areas of provincial jurisdiction, in return for tax compensation.<sup>119</sup>
103. Any major rearrangement of the structure of shared taxes must result from the concerted action of all governments.<sup>120</sup>

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*New distribution of resources: See paragraph 75.*

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115. Statement by Daniel Johnson, fourth meeting of the Federal-Provincial Tax System Committee, Ottawa, September 14-15, 1966, in *Le gouvernement du Québec et la Constitution*, 1968, p. 7. Preliminary statement by Daniel Johnson, Interprovincial Conference on the "Confederation of Tomorrow," Toronto, November 27-30, 1967, in *Le gouvernement du Québec et la Constitution*, 1968, p. 46.

116. Statement by Daniel Johnson, fourth meeting of the Federal-Provincial Tax System Committee, Ottawa, September 14-15, 1966, in *Le gouvernement du Québec et la Constitution*, 1968, p. 5-6.

117. *Ibid.*, p. 5 (quotation).

118. *Ibid.*, p. 7-8.

119. *Ibid.*, p. 8.

120. Brief submitted by Daniel Johnson, Federal-Provincial Conference, Ottawa, February 5-7, 1968, in *Le gouvernement du Québec et la Constitution*, 1968, p. 82.