

GOVERNMENT OF RENÉ LÉVESQUE

(POST-REFERENDUM PERIOD,
MAY 21, 1980 TO MAY 1985)



••• Status of Québec

216. Canada is made up of two equal nations; Québec is the home and foundation of one of these nations and, having the attributes of a distinct national community, enjoys an inalienable right to self-determination. The right to self-determination is the most fundamental right of Québec society.²⁴⁸

217. The clear recognition of the right to self-determination is the most valuable accomplishment of the Québec referendum [...]. It is now undisputed and undisputable that Québec constitutes a distinct national community which can by itself, without outside interference, choose its constitutional status, [...]. The right—to control its own national destiny—is the most fundamental right enjoyed by the Québec people.²⁴⁹

218. The fundamental issue for Québec in its federal-provincial relations is the following: is it possible to renew Canadian federalism in such a way that Québec can, within this system, exercise the powers and control the levers necessary for it to fulfill its role as the home and homeland of one of the constituent nations of Canada?²⁵⁰

219. To be valid, any renewal of the federal system must include concrete recognition of Québec's national identity and of the future requirements inherent in that, whether in terms of culture, communications, economic development and social policy.²⁵¹

Recognition of Québec:
See also paragraphs 221 and 224.

220. In discussions on the patriation of the Canadian Constitution, Québec presents the following proposal regarding the issue of a preamble and a statement of the purpose of the Constitution:

“According to the wishes of Canadians, the provinces, in concert with the federal government, want to remain freely united in a federation, as a sovereign and independent country, under the Crown of Canada, with a constitution that is similar, in terms of its principles, to the existing constitution;

THE FUNDAMENTAL GOAL of the federation is to preserve and promote freedom, justice and the well-being of all Canadians. That is, to:

248. Speaking notes for René Lévesque, First Ministers Meeting, Ottawa, June 9, 1980, *Dossier sur les discussions constitutionnelles*, Commission parlementaire de la Présidence du Conseil et de la Constitution, Québec, August 14-15, 1980, index 1, p. 2 and 3 (See part 2 of this document).

249. *Ibid.*, p.1 (quotation) [Translation].

250. Statement by René Lévesque, Québec National Assembly, *Journal des débats*, June 5, 1980, p. 5992.

251. Opening statement by René Lévesque, Federal-Provincial Conference of the First Ministers on the Constitution, Ottawa, September 8-13, 1980, CICS, doc. 800-14/037, p. 5, 6 and 7.

PROTECT individual and collective rights, including those of aboriginal peoples;

ENSURE that laws and political institutions are based on the will and consent of the people;

PROMOTE the economic aspirations, security and development of the various cultural groups in Canada;

RECOGNIZE the distinct character of the people of Québec which, with its francophone majority, is one of the pillars of the Canadian duality;

CONTRIBUTE to the freedom and well-being of humanity.”²⁵²

••• **Constitutional reform process**

221. Québec’s expectations from the resumption of constitutional negotiations are:

- a) that they acknowledge the existence of a distinct society in Québec that wants to be recognized as such, that is free to decide its future and intends to maintain the cultural, economic and language tools to affirm itself and develop according to its own aspirations and needs, and to acquire the tools it currently lacks;
- b) that they result in a clarification of the distribution of powers and a significant reduction in areas of federal-provincial overlapping;
- c) that the federal government acknowledge that the provinces are not regional administrative entities, but major, responsible partners.²⁵³

222. Provided the government of Canada withdraws its patriation proposal, Québec would agree to an amending formula in which:

- a) in general, a constitutional amendment would require approval by the federal Parliament and seven provinces representing at least 50% of the population of Canada;
- b) any province could withdraw, with reasonable compensation, from a constitutional amendment (passed according to the above formula, excepting those concerning Senate reform and the Supreme Court, among others) that reduces the legislative authority, property rights or other rights or privileges of the legislature or government of a province;
- c) any constitutional change concerning the office of the Queen, the Governor General and the Lieutenant Governor, use of French or English, the composition of the Supreme Court and changes to the amending formula, among others, requires unanimous consent.²⁵⁴

223. The National Assembly of Québec, mindful of the right of the people of Québec to self-determination, and exercising its historical right of being a full party to any change to the Constitution of Canada which would affect the rights and powers of Québec, declares that it cannot accept the plan to patriate the Constitution.²⁵⁵

224. Québec sets four conditions for its signing of the *Constitution Act, 1982*:

252. Opening statement by René Lévesque, Federal-Provincial Conference of the First Ministers on the Constitution, Ottawa, September 8-13, 1980, CICS, doc. 800-14/037, p. 5, 6 and 7.

253. Preliminary declaration by Claude Morin, Minister of Intergovernmental Affairs, Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index B, p. 3.

254. Constitutional agreement, Canadian proposal for the patriation of the Constitution, April 16, 1981; document signed by provinces, except Ontario and New Brunswick (Part 3: document no. 14). Québec’s opposition to the federal project for unilateral patriation was also expressed in the resolutions of the Québec National Assembly on November 21, 1980 and October 2, 1981 (See part 3: documents no. 13 and 15).

255. Resolution of the Québec National Assembly, December 1, 1981 (quotation; see part 3: document no. 18). See also the Constitutional agreement, November 5, 1981 on patriation finalized without Québec’s participation (Part 3: document no. 16) and the declaration by René Lévesque, November 5, 1981 (See part 2 of this document). See also Order-in-Council no. 3214-81 of the government of Québec, November 25, 1981 (Part 3: document no. 17).

1) recognition of the principle of equality of the founding peoples and the distinct character of Québec as a society; 2) a *veto* or general opting-out right with full financial compensation; 3) non-application of section 23 to Québec; and 4) abrogation of the Charter's mobility rights.²⁵⁶

225. Québec agrees to participate in aboriginal peoples conferences at the express request of representatives of aboriginal nations in Québec. This participation cannot be interpreted as recognition of the Constitution Act, 1982.²⁵⁷

••• Constitutional amending procedure

See paragraphs 222-224.

••• Distribution of powers

a) General principles

226. Affirmation of the basic equality of the two founding peoples cannot occur within Canadian federalism unless Québec is granted a unique role and the ability to exercise a set of special powers.²⁵⁸ These powers affect education (including adult education), communications (radio, television, cable distribution and pay-TV), social policy, immigration, economic development, natural resources and Québec's international affirmation.²⁵⁹

227. The Québec government has always maintained that it cannot accept a

pan-Canadian approach to the development of economic policy. Regional differences in Canada and the disparities in development in each region are too marked to think that standardized measures can be effective everywhere to the same degree. The Québec government is surely in the best position, if it is given the means, to promote economic development.²⁶⁰

Economic powers: See also paragraph 249.

228. The government nearest the people is in the best position to appreciate the circumstances of the various groups making up the population and is best able to adapt its legislation, programs and services to the needs expressed by citizens. The current status of women is not foreign to this observation and provides an outstanding example of the need for the central government to respect provincial primacy and autonomy in order to protect women's rights and improve their situation. For this reason, Québec immediately rejects the idea of a national action plan.²⁶¹

Clarification of the distribution of powers and constitutional reform: See paragraph 221.

b) Sectorial jurisdictions

229. Québec demands that provincial legislative primacy in the realm of communications and communications systems be written into the Constitution, including: 1) the reception and transmission

256. Resolution of the Québec National Assembly, December 1, 1981 (See part 3: document no. 18); see also the letter from René Lévesque to Margaret Thatcher, Prime Minister of Great Britain, December 19, 1981 and the letter from René Lévesque to Prime Minister Pierre Elliott Trudeau, December 17, 1982.

257. Opening statement by René Lévesque, Conferences of First Ministers on Constitutional Issues of Interest to Native People, Ottawa, March 15-16, 1983, CICS, doc. 800-17/033, p. 1, March 8-9, 1984, CICS, doc. 800-18/021, p. 1 and April 2-3, 1985, CICS, doc. 800-20/014, p. 1.

258. Speaking notes for René Lévesque, First Ministers Meeting, Ottawa, June 9, 1980, *Dossier sur les discussions constitutionnelles*, index 1, p. 4 (See part 2 of this document).

259. Statement by René Lévesque, Québec National Assembly, *Journal des débats*, June 5, 1980, p. 5995-5999.

260. Government of Québec, document on economic development, Federal-Provincial Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc. 800-16/018, p. 4.

261. Speaking notes for Pauline Marois, Minister responsible for the Status of Women, Federal-Provincial-Territorial Conference of Ministers responsible for the Status of Women, Ottawa, May 31 and June 1, 1983, CICS, doc. 830-129/019, p. 3-4.

within the province of signals from outside the province; 2) the transmission outside a province of signals originating inside the province; 3) the ownership and management of communications and communications systems; 4) the programming, including commercial advertising; 5) authority to issue operating Licences, as well as the specific assignment of frequencies and other technical operating standards. In addition, the federal Parliament would be authorized to legislate exclusively in areas such as 1) the general management of broadcast frequencies; 2) the use of communications and communications systems for aeronautics, defence or national emergencies 3) matters relating to the Canadian Broadcasting Corporation, whose development plans would, however, be subject to approval by the government of a province for activities within that province.²⁶²

230. Québec requests that the federal government respect provincial jurisdiction over closed-circuit television services and proposes that any business wishing to distribute a pay-TV service be required to satisfy conditions set by the province.²⁶³

Communications: See also paragraph 226.

231. Québec considers that in the Gulf of St. Lawrence its territory extends to the median lines dividing its shores. Concerning ore and other resources

located outside the immediate territory of the provinces in the 200-mile economic zone, Québec advocates concurrent jurisdiction with provincial legislation taking precedence. The exception would be the distribution of mining duties among provinces, where federal authority could take precedence until the provinces concerned reach an agreement on the matter.²⁶⁴

232. Québec proposes to add fishing and fisheries within the province to the list of areas of which the provinces would have exclusive legislative power, and to eliminate this power from the list of areas subject to exclusive federal legislative authority. A provision must be added to the Constitution defining the rights of the provinces bordering on the Gulf of St. Lawrence and specifying that the limits of the provinces of Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland extend to the median lines equidistant from their respective Gulf shores.²⁶⁵

233. Québec claims full jurisdiction over job creation programs and demands the recovery of funds allocated for this purpose by the federal government. Québec bases this claim on the fact that francophone workers have little out-of-province mobility because of significant social and cultural factors.²⁶⁶

234. Québec wants full responsibility over policy and decision-making in the area of adult training and asks the federal

262. Notes of the Québec government on communications, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossiers sur les discussions constitutionnelles*, index 8, p. 1-3.

263. Proposal by Québec concerning pay-TV, Federal-Provincial Conference of Ministers of Communications, Winnipeg, September 9-10, 1981, CICS, doc. 830-103/012; see also Québec's position on pay-TV, Federal-Provincial Conference of Ministers of Communications, Calgary, May 21, 1982, CICS, doc. 830-117/009.

264. Note of the Québec government on off-shore resources, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 6, p. 1.

265. Note of the Québec government on fisheries, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 7, p. 2-3.

266. Supporting document of the Québec government on human resources, First Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc. 800-16/044-1, p. 4.

government for the transfer of all federal funds allocated to adult vocational training in Québec.²⁶⁷

Vocational training: See also paragraph 246.

235. Québec considers that unconditional transfers of funds for post-secondary education, tuition fees and student assistance are not negotiable because they relate to education and fall within the provinces' exclusive jurisdiction.²⁶⁸

Education: See also paragraphs 226, 238 and 246.

236. Québec makes the following constitutional proposals concerning family law:

- a) marriage should be within exclusive provincial jurisdiction;
- b) divorce would be an area of concurrent jurisdiction, though provincial legislation would have primacy over federal legislation. In addition, a province could exclude, by declaration of the legislature, the federal Parliament from the realm of divorce;
- c) furthermore, the provinces would have exclusive jurisdiction over ancillary divorce measures (alimony, maintenance, etc.) while the federal Parliament would have exclusive jurisdiction over standard rules concerning national recognition of divorce judgments issued both in Canada and in other countries;
- d) in addition, the provinces would have the authority to appoint judges to a unified family court.²⁶⁹

237. Québec proposes that each province have exclusive jurisdiction over natural resources (including regulation of interprovincial trade), with provincial legislation taking precedence over federal legislation in this area, so that the federal government could not invoke its general powers (residuary and implicit power, declaratory, reserve and disallowance powers, exceptional provisional power, etc.) to override a provincial law. In addition, the provinces' public ownership should not be subject to expropriation by Parliament, except with the consent of the provincial government concerned.²⁷⁰

Québec's international affirmation: See paragraph 226.

Status of women: See paragraph 228.

c) *Unilateral powers*

238. Québec denounces the encroachment on provincial jurisdiction caused by the imposition of federal national standards that, through the federal spending power, erode the distribution of powers between the two orders of government. It is unacceptable to Québec that the federal government implement an inspection and monitoring system in a sector of provincial jurisdiction such as health, that it pay grants to municipalities directly and make payment of its contributions subject to compliance with the criteria of "national" objectives, in particular in education. If provincial jurisdiction is

267. Supporting document of the Québec government on human resources, First Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc. 800-16/044-1, p. 4. See also the statement by René Lévesque, Annual First Ministers Conference, Charlottetown, August 19-22, 1984, CICS, doc. 800-26/007, p. 3. Concerning vocational training, see also a note of the Québec government on adult vocational training in Québec, First Ministers Conference on the Economy, Regina, February 14-15, 1985, CICS, doc. 800-19/036, p. 35-36.

268. Supporting document of the Québec government on human resources, First Ministers Conference on the Economy, Ottawa, February 1982, CICS, doc. 800-16/044-1, p. 4.

269. Note of the Québec government on family law, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 11, p. 2.

270. Note of the Québec government on natural resources, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 5, p. 3-4. The government reiterates the position taken at the First Ministers Conference of February 1979.

to be defended, the provinces must effectively exercise their powers, fully occupy their areas of jurisdiction and the federal spending power must be limited, with the latter a priority.²⁷¹

Subsidies for municipalities: See also paragraph 247.

*Unilateral powers and natural resources:
See paragraph 237.*

••• Individual and language rights

239. The vast area of rights and liberties is evolving rapidly. Constitutional entrenchment would inevitably complicate this process, make it infinitely more difficult and deny elected assemblies the power to act democratically in this area, transferring it to the courts for judgment.²⁷²

240. Québec is opposed to the inclusion in the Constitution of language rights that would limit its freedom to maneuver in a sector so vital to its future as a society. Québec cannot accept that its autonomy in this area be replaced by a limited authority subject to interpretation by the courts.²⁷³

241. Québec will include an override clause in each statute passed by the National Assembly before April 17, 1982. A similar clause will henceforth be added as a matter of course to each bill submitted to the National Assembly.²⁷⁴

*School language rights and mobility rights:
See paragraph 224.*

••• Institutions

242. Québec proposes that the following points be included in the Constitution concerning the Supreme Court:

- a) institutionalize the Supreme Court;
- b) confirm the current composition of the Court, i.e. nine judges, three of whom are from Québec;
- c) specify that the federal government, before appointing a judge to the Court, must obtain the approval of the Minister of Justice of Québec or of the province concerned;
- d) specify that the Supreme Court is the last resort tribunal in Canada, both for civil and criminal matters;
- e) indicate that when the Court must decide on an issue of civil law in Québec, a bench will be formed on which the majority of the judges will be from Québec;
- f) add that the provinces can refer a request for an opinion to the Court;
- g) entrench the rule of linguistic alternation of the Chief Justice of the Supreme Court;
- h) create a constitutional bench on the Court, half of whose members to be drawn from Québec and the other half from the other provinces. This bench would be responsible for deciding constitutional disputes submitted by the provinces or the federal government.²⁷⁵

271. Statement by René Lévesque on the current situation and priorities for the future, Annual First Ministers Conference, Charlottetown, 1984.

272. Speaking note for René Lévesque, First Ministers Meeting, Ottawa, June 9, 1980, *Dossiers sur les discussions constitutionnelles*, index 1, p. 5 (See part 2 of this document). On this subject, see also paragraph 206.

273. Note of the Québec government on the Charter of Rights, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 3, p. 5 (quotation).

274. Statement by Marc-André Bédard, Minister of Justice, *Journal des débats*, May 5, 1982, p. 3291.

275. Note of the Québec government on the Supreme Court, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 10, p. 2. In January 1979, the Lévesque Government asked for the creation of a constitutional court, the majority of whose judges would be appointed directly by the provinces, and demanded that jurisdiction over Québec civil law rest, in the final instance, with the Québec Court of Appeal. See *Dossier sur les discussions constitutionnelles 1978-1979*.

243. The provinces should have the constitutional authority to appoint judges to superior, district and county courts.²⁷⁶

244. According to Québec, a reformed Upper House should provide significant provincial representation and participation in the exercise of federal power. Québec also believes that the composition and operation of this House should reflect the dual nature of the Canadian nation.²⁷⁷

•• Intergovernmental policy

a) Conducting intergovernmental relations

245. As long as the people of Québec have not decided democratically to opt for a different regime, a government headed by the Parti québécois must act to protect and defend the interests of Québec within the federal system. The federal government will find Québec quite prepared to maintain harmonious relations with it.²⁷⁸

246. Québec is prepared, in spite of diverging constitutional interests, to agree to occasionally adopt joint actions with the provinces concerning specific issues (education, municipal institutions, vocational training, economic development, federal spending power).²⁷⁹

247. The Québec government has never agreed nor has it the intention of agreeing to the implementation of a system

of direct relations between the federal government and the municipalities. Such a system would in fact erode the province's already too-limited jurisdiction.²⁸⁰

b) Financial aspects of federalism

248. The Québec government agrees that the principle of unconditional federal payments to the provincial governments should be written into the Constitution [...]. Such payments should be the preferred method of correcting regional disparities. Furthermore, Québec is prepared to have written into the Constitution the principle according to which all governments commit themselves to reduce regional disparities.²⁸¹

Unconditional transfers: See also paragraph 235.

249. Québec and the provinces in general must have real economic powers.²⁸² Québec proposes that certain economic powers be decentralized. It also wants to increase the means at its disposal to stimulate growth within Québec and correct market imbalances, and does not agree economic under-development be mitigated by higher transfer payments.²⁸³

c) Aboriginal Nations

250. Québec formulates its reply to aboriginal demands:

a) it recognizes that the aboriginal peoples of Québec are distinct

276. Note of the Québec government on the Supreme Court, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 10, p. 3.

277. Note for an intervention by Québec on the Senate, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 9, p. 3.

278. Inaugural message of René Lévesque, fifth session of the 32nd Legislature, *Journal des débats*, October 16, 1984, p. 22.

279. Statement by René Lévesque on the current situation and priorities for the future, Annual First Ministers Conference, Charlottetown, August 19-22, 1984, CICS, doc. 850-26/007, p. 6.

280. Speaking notes for Jacques Léonard, Minister of Municipal Affairs, Interprovincial Conference of Ministers of Municipal Affairs, Victoria, August 9-12, 1983, CICS, doc. 860-130/013, p. 2 (quotation); see also the letter from René Lévesque to Pierre Elliott Trudeau, May 26, 1983, CICS, doc. 860-130/014, p. 1.

281. Note of the Québec government on equalization and regional disparities, meeting of the Comité permanent des ministres sur la Constitution, Montréal, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 12, p. 3.

282. Notes of the Québec government on the powers affecting the economy, meeting of the Comité permanent des ministres sur la Constitution, July 8-11, 1980, *Dossier sur les discussions constitutionnelles*, index 4, p. 3.

283. Comments by Québec on the federal positions relating to economic powers, Vancouver, July 22-24, 1980, *Dossier sur les discussions constitutionnelles*.

- nations and have a right to their culture, their language, their customs and traditions as well as the right to decide how to develop this separate identity;
- b) it also recognizes that aboriginal nations, within the structure of the laws of Québec, have the right to own and control the lands attributed to them;
- c) these rights must be exercised within the context of Québec society, and consequently they cannot include sovereignty rights that could jeopardize the territorial integrity of Québec;
- [...]
- j) from Québec's point of view, protection of the existing aboriginal rights also extends to the rights included in agreements reached with Québec as part of the land claims process. In addition, the James Bay and Northern Québec Agreement and the North-eastern Québec Agreement must be viewed as treaties and have full effect;
- k) Québec is ready to explicitly recognize in its legislation the existing rights stemming from the Royal Proclamation of 1763 concerning aboriginal nations.²⁸⁴
-
- Participation in conference on Aboriginal Peoples:
See paragraph 225.*
-

284. Cabinet decision, February 9, 1983, included in *Les fondements de la politique du gouvernement du Québec en matière autochtone*, Secrétariat aux affaires autochtones, gouvernement du Québec, 1988, p. 3 and 4. See also the resolutions of the Québec National Assembly on March 20, 1985 and May 30, 1989 (Part 3: document no. 19).