

SECOND GOVERNMENT OF ROBERT BOURASSA

(PERIOD PRECEDING THE FAILURE OF THE
MEECH LAKE ACCORD, DECEMBER 12, 1985
TO JUNE 21, 1990)



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••• Status of Québec

273. Québec's future lies within Canada. That is the profound conviction of the vast majority of Quebecers and the first and fundamental commitment of this government. The Québec government believes in federalism because, within the federal system, Québec can not only be faithful to its history and special identity but also enjoy favourable conditions for its full economic, social and cultural development.²⁹³

274. Recognition of Québec's specificity is a pre-requisite to any talks to persuade Québec to support the *Constitution Act of 1982*. Such recognition must guarantee Québec the means necessary to ensure its full development within the framework of Canadian federalism.²⁹⁴

275. Given its special situation within Canada and North America, Québec has sought, by means of the five conditions for its endorsement of the *Constitution Act, 1982*, to obtain assurance that the Canadian Constitution will enable it to attain its full potential within the Federation and receive the guarantees and powers necessary to protect and develop the characteristics that contribute to its specificity. Recognition of Québec's specificity was therefore a prerequisite to any negotiation intended to achieve Québec's endorsement of the *Constitution Act, 1982*. The efforts to find satisfactory constitutional answers to the other conditions laid down by Québec were based essentially on this special identity that sets Québec apart, particularly at the cultural, linguistic, social, economic, legal and political levels. Recognition of the distinct character of Québec society therefore became the generating principle of the other conditions, their common *raison d'être*.²⁹⁵

Distinct society and Meech Lake Accord:
See paragraph 279.

Québec's specificity and free trade:
See paragraph 296.

••• Constitutional reform process

276. Québec objects to the fact that the 1981 patriation was used as a pretext to substantially amend the Canadian constitution, despite Québec's objections and in disregard of its historic rights.²⁹⁶

293. Opening speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs at the Symposium "Rebuilding the Relationship: Québec and its Confederation Partners," Mont-Gabriel, May 9, 1986, p. 8 (See part 2 of this document).

294. *Ibid.*, (quotation) p. 15.

295. Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, "L'Accord constitutionnel de 1987 et le rapatriement du Québec au sein du fédéralisme canadien," at a Symposium organized by the Canadian Bar Association on the 1987 Constitutional Accord, in *L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques*, Les Éditions Thémis, 1987, p. 190.

296. Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel Symposium, May 9, 1986, p. 4 (See part 2 of this document).

277. No government of Québec of whatever political leaning could sign the *Constitution Act*, 1982 as it is currently worded. However, if certain changes were made, this constitutional law could be acceptable to Québec. These changes are: 1) explicit recognition of Québec as a distinct society; 2) guarantee of greater powers over immigration; 3) limitation of the federal spending power; 4) recognition of a *veto* power; and 5) Québec's participation in appointing judges to the Supreme Court of Canada.²⁹⁷

The distinct society as the primary generator of Québec's other conditions: See paragraph 275.

278. The 1987 Constitutional Accord (The Meech Lake Accord), a corrective agreement insofar as it enabled Québec to resume its place as a major and distinct partner in the federation, ends Québec's constitutional isolation. It completes the patriation process initiated in 1981-1982 and restores the very foundations of federalism by ensuring that the governmental partners give their full and willing accord to the basic constitutional document by which they are governed.²⁹⁸

279. In substance, the Constitutional Amendment, 1987, includes the following elements:²⁹⁹

- 1) It stipulates that any interpretation of the Constitution must be consistent with the recognition of these two points: that Québec forms a distinct society within Canada and that the legislature and government of Québec are mandated to

protect and promote this distinct character; that linguistic duality is a basic characteristic of Canada, a characteristic for whose protection Parliament and the legislatures are responsible.

- 2) It stipulates a procedure, that can be written into the Constitution, for negotiating accords relating to immigration, which, subject to Parliament's power to set national standards and objectives concerning the setting of general immigrant categories, in particular, immigration levels and the choice of categories of ineligible persons, allow a province to exercise new powers in this area.
- 3) It gives every province the right to opt out with fair financial compensation of any new shared-cost program established in a sector of exclusive provincial jurisdiction, provided the province institutes a program or measure compatible with national objectives.
- 4) It places under the principle of provincial unanimity certain constitutional amendments that, under the *Constitution Act*, 1982, required only the application of the general amending formula. These amendments affect proportional representation of the provinces in the federal Parliament, the powers of the Senate and the selection of Senators, appointments to the Supreme Court, the creation of new provinces and the extension of existing provinces.

297. Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel Symposium, May 9, 1986, p. 4-5 and p. 12 (See part 2 of this document).

298. Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, "L'Accord constitutionnel de 1987 et le rattachement du Québec au sein du fédéralisme canadien," in *L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques*, Les Éditions Thémis, 1987, p. 190.

299. The Constitutional Amendment, 1987, and resolution of the Québec National Assembly, June 23, 1987 (Part 3: documents nos. 22 and 23). See also the speech delivered by Robert Bourassa (June 18, 1987) upon the tabling of the motion at the Québec National Assembly (See part 2 of this document).

In addition, the 1987 Constitutional Amendment guarantees the provinces the right to withdraw, with fair financial compensation, from any constitutional amendment that transfers provincial legislative powers to Parliament.

- 5) It stipulates, among other things, that three of the nine Supreme Court judges must be from Québec and that the Governor General in Council appoints only candidates proposed by the Québec government. Furthermore, the same procedure would apply to appointments to fill Senate vacancies.

280. The issues Québec would like to see resolved during the second round of constitutional discussions will obviously reflect our traditional demands and, in conjunction with the gains realized in 1987, will seek to widen the scope of Québec's role in the Canadian Federation.³⁰⁰

••• Constitutional amending procedure

281. The Constitutional amending procedure included in the *Constitution Act, 1982* is fundamentally unacceptable to Québec in that it fails to make provision for financial compensation in every case of opting out, and it allows changes to federal institutions and the creation of a new province despite Québec's objection.³⁰¹

Constitutional amending procedure and Meech Lake Accord: See paragraph 279.

••• Distribution of powers

a) *Sectorial jurisdictions*

282. Québec's cultural security must be guaranteed. Specifically, Québec must control every aspect of its immigration to maintain its francophone character, by using its power to balance or even reverse the trends pointing to a decline in its relative demographic weight in Canada.³⁰²

*Immigration and Meech Lake Accord:
See paragraph 279.*

283. We must always bear in mind that agriculture is an area of shared jurisdiction between the federal government and the provinces [...]. The role of the federal government is of particular importance in issues of interprovincial and international trade [...]. On the other hand, of course, the provinces can exercise their right to intervene in the areas of financing, marketing, research, production assistance, and income stabilization. We would not agree to any measure that would jeopardize these fundamental rights.³⁰³

284. The Québec government intends to vigorously defend its powers and jurisdiction in the financial sector, while being aware of the need to harmonize its legislation with that of the federal government and the other provinces.³⁰⁴

*Distribution of powers and free trade:
See paragraph 295.*

300. Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, "L'Accord constitutionnel de 1987 et le rattachement du Québec au sein du fédéralisme canadien," in *L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques*, Les Éditions Thémis, 1987, p. 206.

301. Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel Symposium, May 9, 1986, p. 11-12 (See part 2 of this document).

302. *Ibid.*, p. 10.

303. Draft speech by Michel Pagé, Minister of Agriculture, Fisheries and Food, Federal-Provincial Conference of Ministers and Deputy Ministers of Agriculture, Victoria, August 26-27, 1986, CICS, doc. 830-224/024, p. 2 (quotation).

304. Minister responsible for Finance and Privatization, *La réforme des institutions financières au Québec: objectifs, principes directeurs et plan d'action*, Québec, October 1987.

b) *Unilateral powers*

285. The fact that the federal government can and intends to spend money in every area, whether or not they lie within its jurisdiction, has become intolerable. It is a sword of Damocles hanging over each province's policies regarding its social, cultural and economic development. It appears increasingly necessary that this spending power be made subject to provincial approval. Such a change would contribute significantly to improving the way the federal system operates.³⁰⁵

*Federal spending power and Meech Lake Accord:
See paragraph 279.*

••• **Individual and language rights**

286. Québec intends to control language policy within its borders. Québec views the maintenance of its language, culture and institutions as essential to its survival as a distinct society. Therefore, the Québec government must be chiefly responsible for language policy within Québec and, in this area above all, Québec will attempt to secure the broadest possible authority. It will not be willing to sacrifice its jurisdiction over language to an ideal of Canadian unity that does not incorporate very strong guarantees concerning the preservation of its distinct character.³⁰⁶

287. In certain highly controversial issues where it is difficult to identify clear and generally recognized principles,

it was prudent to leave the last word to Parliament. Because of the delicate balance that must be preserved in such matters, Québec favours maintaining the override clause included in section 33 of the *Canadian Charter of Rights and Freedoms*.³⁰⁷

••• **Institutions**

288. The status of the Supreme Court as final arbiter in constitutional debates, should be entrenched in the Constitution. Further, its composition must reflect the Canadian duality in terms of legal systems, and contribute to both preserving Québec's distinct character and recognizing its unique contribution to Confederation. The Court's composition is of great concern to Québec. Constitutional guarantees ensuring adequate representation on the Court and significant participation in the selection process applied to judges from Québec are essential.³⁰⁸

*Supreme Court of Canada, Senate and Meech Lake
Accord: See paragraph 279.*

••• **Intergovernmental policy**

a) *Conducting intergovernmental relations*

289. Québec offers six proposals to help strengthen the Canadian federation: 1) on-going discussions to establish the conditions for Québec's endorsement of a new constitutional accord; 2) a substantial increase in regional economic development efforts; 3) the

305. Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, Mont-Gabriel Symposium, May 9, 1986, p. 10 (See part 2 of this document).

306. Speech by Claude Ryan, Minister of Education, Higher Education and Science and Minister responsible for the administration of the French Language Charter, Kingston, December 8, 1989, p. 1-2 (quotation; see also part 2 of this document).

307. *Ibid.*, p. 8 (quotation).

308. Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, "L'Accord constitutionnel de 1987 et le rattachement du Québec au sein du fédéralisme canadien," in *L'adhésion du Québec à l'Accord du Lac Meech. Points de vue juridiques et politiques*, Les Éditions Thémis, 1987, p. 201.

federal government's continued fulfilment of its constitutional commitment by means of equalization rather than by the implementation of new programs and the re-opening of fiscal arrangements as part of fiscal reform; 4) fair treatment of provinces receiving equalization by making appropriate corrections to the federal proposals in the near future; 5) provincial participation in tax reform, and ensuring the provincial presence in the consumer tax field does not decline; 6) and finally, inclusion in the priorities of each government of the means needed to enable women to achieve full economic equality.³⁰⁹

b) Financial aspects of federalism

290. The Québec government is of the view that the fiscal arrangements between the federal government and the provinces should be covered by a formal agreement between the two orders of government, which would endow them with a more permanent, stable and less arbitrary character than the current arrangements. It also demands that the federal government respect its financial commitments since, in the past, it made the decision to make transfer payments to the provinces rather than allow them sufficient tax room to assume their constitutional responsibilities in the areas of health and post-secondary education. Sufficient resources must be allocated to the provinces to enable them to uphold the principles of providing universal,

accessible and free services. However, if the federal government is no longer capable of meeting its financial responsibilities in regard to health and post-secondary education, it should withdraw from these sectors and provide the provinces with compensation in the form of additional tax points.³¹⁰

291. Québec protests against the federal government's unilateral changes to transfer mechanisms without prior negotiations with the provinces. The Québec government has no objection in principle to some degree of federal withdrawal, but it cannot agree that it should occur without negotiating with the provinces and fiscal compensation. In addition, it is paradoxical that the federal government should withdraw from various sectors while at the same time imposing national standards and applying financial penalties in cases where the provinces do not comply with these standards.³¹¹

Fiscal reform, financial arrangements and equalization payments: See also paragraph 289.

c) Aboriginal Nations

292. The Québec government's position concerning the aboriginal peoples is the following: 1) Québec favours constitutional recognition of the principle of aboriginal self-government within the framework of agreements negotiated with governments; 2) Québec is prepared to negotiate agreements and to make a commitment to that end; 3) Québec wants to be a party to all

309. Opening statement by Robert Bourassa, Annual First Ministers Conference, Vancouver, November 20-21, 1986, CICS, doc. 800-22/047, p. 8-9.

310. Gérard D. Lévesque, Minister of Finance, 1986-1987 Budget Speech, *Schedule F*, p. 18, 19 and 21.

311. *Ibid.*, p. 14.

negotiations on self-government concerning the aboriginal peoples living in Québec, and the resulting agreements must be approved by the National Assembly; 4) finally, Québec accepts that the agreements thus approved should receive constitutional protection.³¹²

*d) French-Speaking and Acadian
Communities of Canada*

293. Québec is resolved to support francophone minorities. However, its initiatives must take into account two principles inherent in the nature of the Canadian federal system:

- a) it is up to each province, in the areas of jurisdiction assigned to it under the Constitution, to carry out its responsibilities toward its linguistic minority;
- b) the federal government, instead of carrying out the duties assigned to the provinces by the Constitution, should concentrate on supporting provincial efforts to ensure effective recognition of the rights of the linguistic minority.³¹³

294. The Québec government will work with francophones outside Québec as follows: Québec will contribute to strengthening francophone communities while respecting their priorities, their needs and their autonomy, in concert with its federal and provincial partners.³¹⁴

e) Trade

295. Québec set conditions on its support for negotiations leading to the Free Trade Agreement between Canada and the United States: 1) It demanded that the existing distribution of legislative and constitutional powers be maintained. Among other things, the normal constitutional rules for the implementation of international treaties had to apply. 2) It also demanded that all the laws, programs and policies which, in the social area as well as communications, language and culture, contribute to Québec's specificity, be maintained. 3) It also wanted to preserve the room to maneuver it needs to develop and modernize its economy, with particular emphasis on small and medium-sized business. 4) It asked for assistance programs for workers and businesses in vulnerable sectors during the transition period. 5) It requested that the federal government and the provinces continue to cooperate in the management and implementation of the Accord as a whole. As such, it wants a standing federal-provincial consultation committee to be formed. Québec indicated, in fact, that it was prepared to change certain of its laws to implement the Accord in the areas within its jurisdiction.³¹⁵

296. While in general, Québec supports the objectives of multilateral trade negotiations, its participation in developing

312. Opening speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, First Ministers Conference on Constitutional Issues of Interest to Native People, Ottawa, March 26-27, 1987, CICS, doc. 800-23/017, p. 4-5 (quotation).

313. Speech by Claude Ryan, Minister of Education, Higher Education and Science and Minister responsible for the administration of the French Language Charter, Kingston, December 8, 1989, p. 11-12 (See part 2 of this document).

314. Speech by Gil Rémillard, Minister responsible for Canadian Intergovernmental Affairs, at the opening of the office of the Fédération des francophones hors-Québec, March 1988 (quotation).

315. *Canada United States Free Trade Agreement: analysis from a Québec perspective*, ministère du Commerce extérieur et du Développement technologique, Québec, 2nd quarter, 1988, p. 39-42.

Canadian negotiating positions reflects its concern to defend the laws, programs and policies that, particularly in the social, cultural and communications areas, contribute to the specificity

of Québec society. The government is also anxious to preserve the maneuvering room that will enable it to strengthen Québec's economic fabric and technological base.³¹⁶

316. *Les négociations commerciales multilatérales de l'Uruguay Round, perspective québécoise*, ministère des Affaires internationales, Québec, March 1990, p. 7.