

Speech by Gil Rémillard, Minister of Justice and Minister for Canadian Intergovernmental Affairs, at the Canadian Bar Association Meeting, Whistler, February 24, 1992.

I am particularly pleased to be with you at your mid-winter meeting. It wasn't so very long ago, before I became involved in politics in October 1985, that I had the pleasure of participating in your meetings as a lawyer and law professor. I see friends here whom I am delighted to meet again.

I would have liked to participate in your various weekend workshops, but I was detained in Québec City at the Justice Summit. Like all the other Canadian provinces, Québec must thoroughly overhaul the administration of justice, to improve its quality and especially its accessibility. The summit, whose theme was "Justice, a Shared Responsibility," made it possible for us, in the four days of discussions, to lay the foundations for firm cooperation among all the main parties: judges, lawyers, notaries, workers, the business community, social groups and government. At the summit, we decided, in particular, to develop together a new approach towards justice based on prevention and alternatives to judicial procedures. Cooperation, mediation and arbitration are the key words in dealing with delays and in making justice truly accessible to all citizens, regardless of their financial situation, ethnic origin, language, religion or other distinctive characteristics.

I would like to speak longer on this subject, which is my main concern as minister of Justice. You are all eminent jurists and your comments would prove of great use to me. I would also like to discuss the reform of our Civil Code, which was assented to on December 18, after more

than four months of study by a parliamentary committee. However, I know that, this morning, you are offering me this forum in my capacity as minister for Canadian Intergovernmental Affairs.

I was pleased to accept your invitation to speak on the constitutional issue because I know that the Canadian Bar has always defended the essential values of this country: freedom, democracy, pluralism and tolerance. Your December research report, "Rebuilding a Canadian Consensus," is fitting testimony to this, while your invitation reflects your legitimate concerns for the future of the country and your desire to understand the present situation, its origins and its meaning.

We are at this critical juncture because in 1982 the Canadian Constitution was patriated despite the opposition of the Québec National Assembly. This is the main explanation for our present constitutional problems. This constitutional "coup de force," unprecedented in the history of our country, is keeping one of the two founding peoples out of the Canadian family.

We tend to forget that the primary objective of the Meech Lake Accord was to redress the injustice done to Québec in 1982. By accepting Québec's five conditions—recognition of Québec as a distinct society, recovery of the *veto*, delimitation of federal spending powers, guarantees of constitutional power in immigration matters, constitutional recognition of three judges from Québec on the Supreme Court—, Canada redressed—five years later—the injustice of 1982 and undertook the comprehensive constitutional reform sought by all Canadian partners.

You have to realize that, with the exception of the recognition of Québec as a distinct society, each and every other provision of the Meech Lake Accord applied to all the provinces, which benefited from them. This was true of the provisions

concerning immigration, broadening of the *veto*, delimitation of federal spending power, the process by which judges are appointed to the Supreme Court of Canada and the constitutionalization of the First Ministers' Conference. The Meech Lake Accord thus supplemented the Constitution Act, 1982 and made it acceptable to Québec.

Three times Quebecers saw the first ministers sign the agreement and extol its virtues. They simply do not understand how the 1982 hostile takeover could take place again over their opposition, when Quebecers represent 25 % of the Canadian population and are one of the founding peoples of the federation.

Quebecers will not accept an agreement that, in essence, would give them less than Meech. This is the first principle that will guide us as a government in examining any federal proposal. On the eve of the report of the Beaudoin-Dobbie Commission, it is undoubtedly worthwhile to recall the other principles that we feel are inescapable in the current debate.

Québec must, first of all, be recognized as a distinct society. We simply want a historic reality, upheld in constitutional texts since at least the Québec Act, 1774, to be used in court to interpret our Constitution. We do not want to be considered superior to the other provinces. We very simply want the distinct society clause to make it possible for the courts to interpret the Canadian Constitution according to our reality and our history. This clause produced the demagoguery and intolerance that defeated Meech Lake. However, for the past few months, we have had the impression that it is better understood and accepted by Canadians.

Another essential principle is the *veto*, which I prefer to call the right to consent to any constitutional amendment that may affect the rights and powers of the Québec National Assembly or alter the central

institutions of the federation. Québec already has this right, as do all the other provinces, in regard to the distribution of powers. The Constitution Act, 1982 indeed provides for a right to opt out, but it carries with it financial compensation only with respect to transfers related to culture and education. The possibilities of such financial compensation should be broadened so as to include all cases of opting out, as provided for in the Meech Lake Accord.

As for the matters dealt with in section 42 of the Constitution Act, 1982 (central institutions, the Senate and the creation of provinces), Québec, as one of the major partners in the federation, is entitled to demand that it have a say in any amendment concerning those matters, since they are at the very heart of the federal compromise of 1867.

Like the other Canadian provinces, we want the Canadian federation to progress in step with the evolution of the country. It is obvious that we must, for example, **strengthen our economic union; this is another principle that will guide us in our evaluation of Canadian offers.** Québec's support for the Winnipeg Intergovernmental Agreement on government procurement contracts exceeding \$25 000 in value is an important indication of what the provinces can accomplish when they work together.

Québec shares the objective of a stronger and more dynamic economic union. We favour the principle of mobility of goods, people, capital and labour. We advocate the elimination of obstacles to the mobility of the factors of production. We were not the only province to say that the federal proposals are disproportionate compared to the objectives that are to be pursued. The courts should not manage the economy or intervene in the drafting or implementation of economic policy. Nor should federal authorities be given unlimited powers that could destroy the powers of the provincial

legislatures. We must find means that call for cooperation in developing the Canadian economic union.

Furthermore, do we need a new institution, the Council of the Federation, when we can easily get along with existing institutions? For example, the First Ministers' Conference on the economy, as was stipulated in the Meech Lake Accord, could be constitutionalized and supplemented by a permanent secretariat, which is already in place and is responsible for preparing federal-provincial conferences. We would thereby respect the principle of executive federalism, which is one of the main characteristics of our Canadian federation and which directly involves the provincial first ministers in the drafting of national policies, through federal-provincial conferences.

The search for greater effectiveness must also guide us in establishing a **new division of powers** that will clearly delineate the jurisdictions of the two levels of government. We should find in the new constitution a division of power establishing a more functional, more cooperative federalism that will reduce overlaps and guarantee that Québec and the other provinces have the means necessary to protect and promote their distinctive characteristics.

It will be recalled that the Pépin-Robarts Commission of 1979 recommended **asymmetrical federalism** as a means to accommodate not only Québec, but the other provinces as well. It is the essence of federalism to meet the different needs of the federal partners. There have always been asymmetrical elements in our constitution. To wit the provisions of the Constitution Act, 1867 concerning denominational schools (section 93), linguistic rights (section 133), property and civil rights (section 92), and the fact that, when they entered the federation, the four western provinces did not have jurisdiction over their natural resources, in contrast to the other provinces.

Another illustration is the Constitution Act, 1982 and its amending formula, which enables a province to opt out of a constitutional amendment and thereby acquire a special status.

Asymmetry and federalism are compatible. Without overestimating its implications, we may view asymmetry as an important means of establishing a division of powers likely to satisfy both Québec and the other provinces, while consolidating the foundations of the federal government in regard to its national responsibilities.

We also feel that **the new distribution of powers must be constitutional in nature.** Simple administrative arrangements can be useful in certain areas of joint jurisdictions, but we know that such agreements are always at the mercy of federal legislation. They are not sufficient. We would do a disservice to all levels of government by favouring systematic recourse to administrative agreements.

Lastly, **the territorial integrity of provinces** must be respected. The territory of a province may not be changed without the province's consent. This principle is already entrenched in section 43 of the Constitution of 1982 and must be abided by in any constitutional agreement recognizing the right of the Aboriginal peoples to self-government. The Québec National Assembly has recognized the principle of Aboriginal self-government in the framework of agreements with governments.

In 1975, we concluded, with Aboriginal Nations, an agreement recognizing their ancestral rights, and we have demonstrated that it is possible to establish harmonious relations with them when exaggeration and demagoguery are cast aside. I am convinced that we are able to achieve as much in regard to the legitimate desire of the Aboriginal peoples for self-government. However, let it be clearly understood at

the outset that self-government indeed signifies rights, but equally important obligations as well, and that it must be set up in the context of negotiated agreements, approved by the governments.

The option favoured by the Québec government is still profoundly renewed federalism. The day after the failure of Meech, Prime Minister Bourassa announced that his government would no longer participate in federal-provincial conferences and that Quebecers were the ones to decide their own future. In the wake of the recommendations of the Bélanger-Campeau Commission, the National Assembly adopted Bill 150, under which two parliamentary committees were created: one to examine offers that might be made by the federal government and the other provinces; the other to assess the impact of sovereignty. The work of these two committees is progressing according to a strict timetable, established by Bill 150, which provides for the holding of a referendum on sovereignty no later than October 26, 1992.

For the good of Québec and the good of Canada, this timetable must be complied with. The process followed until now by Ottawa has abided by this timetable. Offers must reach us early enough for the parliamentary committee of the National Assembly to examine them and carry out its mandate. The Liberal Party of Québec, which forms the government, will then hold a special congress during which members will evaluate the federal offers in light of the Allaire Report, which is the constitutional position of the party.

As a government, we believe it is our duty to do everything in our power to enable Quebecers to make an enlightened decision. The parliamentary committees are examining the two options carefully. Sovereignty appears to be legitimate and feasible. In the short term, it entails costs for Québec and, let's not forget, for the

rest of Canada as well. It also appears from various testimonies that an economic association integrated into a political structure could result in harmonious, effective cooperation for the betterment of the two communities.

The deadline set forth by Bill 150 should not be considered a sword of Damocles hanging over the head of Canadians. Quebecers have given themselves this instrument to finally put a stop to constitutional uncertainties and build their future with serenity.

Bill 150 is no bluff.

I am confident. The constitutional conferences that concluded in this province last weekend were a profitable exercise in changing mentalities and attitudes. These conferences were unusual in that Canadians from all regions came to discuss the momentous questions at the heart of the constitutional debate, and to voice diverging points of view and possible basis for agreement.

Our determination to settle the constitutional question once and for all springs from the desire to protect our social and cultural values and the conviction that resolution of the matter is a *sine qua non* for strengthening our economy. Economic strength and stability will enable Québec and Canada to maintain and improve their competitive position at the turn of the century in a difficult and changing world in which everything, not only state borders, is questioned. Let us settle our constitutional problems and we will be able to work together to develop new social and economic models which will mirror our identity and values.

Federalism is built on principles which can enable us to attain our objectives. Only by the will of men and women of this county will we be able to transform those principles into reality.

Source: Text of the speech.