

Statement by René Lévesque, Prime Minister of Québec, made at the Meeting of the First Ministers in Ottawa from June 8 to 13, 1980, June 9, 1980.

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During the referendum last May 20, Quebecers, for the first time, exercised their right to self-determination. This was done democratically and legally, and because the Prime Minister and a number of Premiers were personally involved, it was recognized as such by the rest of Canada. The same was true for the international community, which showed a keen interest in the process.

The clear recognition of this right is the most valuable accomplishment of the Québec referendum. Regardless of the outcome, it is now undisputed and indisputable that Québec constitutes a distinct national community which can by itself, without outside interference, choose its constitutional status. Quebecers can decide to remain within Canadian federalism, just as they can decide, democratically, to leave, should they consider this system no longer able to meet their aspirations and their needs. This right—control over its own national destiny—is the most fundamental right enjoyed by the Québec people.

Exercising this right to self-determination is a powerful tool in constitutional change. Even now, it is at the root of the present round of negotiations. It has prompted a great many statements and commitments on the part of Canadian politicians relating to Québec's place in Confederation. It has made the public in the rest of Canada aware of the urgency of reforming the present system. It has played the role of an activating mechanism.

It will play no less a determining role should the present negotiations end in failure. During the referendum, Quebecers

did not endorse federalism in a definitive way; rather, they simply gave it a final chance to renew itself, in a manner that would allow Québec to gain the extended powers it needs to ensure its development and assert itself according to its own nature. It will be up to Quebecers to judge the outcome of these negotiations and draw conclusions from them.

Thus it cannot be a matter of relinquishing, in any manner whatsoever, the very precious right to self-determination. Moreover, I feel that Quebecers would repudiate once and for all a leader who would undermine this now-recognized right. Rather, in any new constitutional arrangement, it will be necessary to provide for explicit recognition of Québec's right to self-determination. Definitive and permanent commitments are out of question: Quebecers will always choose to maintain their right to decide their constitutional destiny themselves.

The draft statement proposed by the federal government is unacceptable in this regard, not only because it does not recognize Québec as a distinct national community with the right to self-determination, but also because it denies this basic reality by laying exclusive emphasis on the oneness of the Canadian people and Canadian sovereignty. By adopting such a position, the federal government is returning precisely to the positions it had put forward in previous years, and is breaking the promises it made during the Québec referendum campaign regarding a more open attitude. If this is what was in mind when the solemn promise was made to renew Canadian federalism, it would have been more honest to say so directly. For now, this move backward will quite rightly be interpreted by the people of Québec as another example of the federal government's annoying habit of promising one thing before an election and doing exactly the opposite after.

According to the draft statement of principles proposed by the federal government, Canada is one nation, one sovereignty; the federal tie is indissoluble; Québec does not constitute a distinct national community with the right to freely, without outside interference, choose its national destiny. For us, and we believe, for the majority of Quebecers, Canada is composed of two equal nations; Québec provides one of these nations with its focus and support and, possessing all the attributes of a distinct national community, it has an inalienable right to self-determination. These are therefore two opposing visions of the nature of Canada; they are visions which have often confronted each other in the past and which are at the very root of Canada's constitutional crisis.

Moreover, this fundamental problem is the main reason why, since the 1960s, reforming the Constitution has always been like trying to square the circle. Nonetheless, a solution will eventually have to be found to ensure that this national homeland, Québec, has sufficient control over cultural, social, political and economic tools in order to provide its people—who are now modern and mature—with every opportunity for development. For the French nation centred on Québec, this is the only way that it will be possible to achieve what the draft statement identified very strongly as the sole objective of a political system: “the happiness and fulfilment of each and all of us.” In Québec, moreover, we are all in agreement on this point; consider even the Beige Paper of the Constitutional Committee of the Québec Liberal Party, which recommended: “We must affirm the fundamental equality of the two founding peoples who have given, and still provide, this country its unique place in the family of nations. This basic dualism must be consecrated in the supreme document of the country.” (p. 22)

This will never come about within Canadian federalism if there is no eventual agreement that Québec's role in Canada must be described as very special. Not in the sense that would mean unwarranted gifts or favours, but rather an entire range of special powers and the right of Québec to exercise them without constraint, relying on its own resources.

May I refer my colleagues back to a number of examples which I mentioned once more last Thursday, in our National Assembly. Most of them are well known.

This quite naturally leads me to comment, finally, on the one concrete aspect of the draft statement: the one dealing with both individual rights and freedoms and language rights.

On the first point, noting from the outset that our attitude bears no intention of being carved in stone, I must say that in our view, the federal government's adamant insistence seems at the very least premature, and quite likely unadvisable. This whole area of rights and freedoms is still, here as elsewhere, in the process of rapid evolution. Constitutional “entrenchment” would inevitably result in complicating this evolution, in making it infinitely more difficult, and in depriving the elected assemblies of the power to guide it along democratically and instead entrusting it to the discretion of the courts. This is precisely what was noted just a few days ago by one of the most distinguished members of the Canadian judicial community, former Supreme Court Justice Louis-Philippe Pigeon, who stated that in considering the eventual effect of an entrenched Charter of Rights, it must be realized that this involves giving the courts a sizeable share of legislative power. It would be wrong, he felt, to believe that this function is comparable to that of interpreting a federal constitution.

He then went on to recall an opinion expressed earlier (1968) by another ultimately prominent member of the Supreme Court, Chief Justice Laskin, who felt that the possibility of an entrenched charter raises serious concerns regarding the balance achieved over the years—by judicial decisions and constitutional custom – between the central authority and that of the constituent states. Then, after citing the, to say the least, questionable consequences of the judicial “activism” brought on by such a charter in the United States, Mr. Justice Pigeon concluded by reminding everyone that there already exists, in Canada, a Bill of Rights which has given the courts powers they had never had before, powers for which they had no experience and no specific rules to follow.* To this I might add, in the case of Québec, a Charter of Human Rights and Freedoms of increasingly remarkable scope, precision and vitality. Why create more rigidity rather than letting evolution take its course?

With respect to the inclusion of language rights in a renewed constitution, I can only repeat, with the same unshakable resolve, the points I made as early as 1977 to the federal Prime Minister:

“A constitutional amendment would restrict the jurisdiction of the provincial legislatures in the field of education by limiting their ability to legislate in this area. As far as Québec is concerned, my government, as well as all its predecessors, have always felt that the powers we have in education are absolutely vital for the preservation of our cultural identity, and that we must keep intact all the room for

manoeuvring we have in this regard in order to adapt to the situation, whichever way it evolves.

To me, this fundamental principle appears irreconcilable with your proposal to subject Québec to a constitutional provision which, even if it were established on a different basis from that of other provinces, would in effect mean relinquishing part of our exclusive jurisdiction in education. Québec will never accept its sovereignty in as vital an area being replaced by limited jurisdiction subject to judicial interpretation. Indeed, it would be unthinkable that the Supreme Court of Canada, which shall always have a majority of non-Quebecer, English-speaking members, should supersede Québec’s National Assembly as the ultimate authority with regards to education.

I wish to point out that this attitude is unrelated to our Government’s objective of political sovereignty. On the contrary, it is especially within the existing federal framework that these powers in education are absolutely essential for our protection against gradually becoming a minority within Québec itself.”**

It would be a serious mistake to try, in the light of the referendum results, to force upon Québec a conception of Canada it has always rejected and fought. If negotiations are to proceed in good faith with a reasonable chance of success, more open-mindedness is required.

Source: *The Constitutional Discussions: Selected Documents*, Committee on the Presidency of the Executive Council and on the Constitution, August 14-15, 1980, p. 38-43.

* Remarks by Mr. Justice L.P. Pigeon at a seminar held at Laval University, Québec City, May 24, 1980.

** Letter to the Rt. Hon. Pierre Elliott Trudeau, September 9, 1977 [Translation].