

Québec and its Territory

Table of Contents

[Message from the Minister](#)

[A Sovereign Québec Will Keep its Borders](#)

[Québec Is Indivisible](#)

[Québec's Territory](#)

[The Question of the Rights of Aboriginal Peoples](#)

[Opinions of Five International Experts](#)

[For a Democratic Debate](#)

My fellow Quebecers:

The integrity of Québec's territory has never been a particular subject of debate, either here or in the rest of Canada. Until recently, it was accepted that if Quebecers were to democratically decide their accession to sovereignty, Québec would keep its present territory and would be recognized within its existing borders.

This assumption was buttressed by the cases of dozens of countries that have come into existence since the creation of the United Nations in 1945.

Now, suddenly, a strange debate has erupted over carving up or dividing the territory of a sovereign Québec. Québec's borders would no longer be based on geography but rather on ethnic or linguistic considerations. This is what the “partitionists” are proposing. What first appeared a ludicrous idea, a sort of utopia of the desperate, has spread like wildfire, fed by misinformation and exaggeration.

Yet the partitionists' claims have no basis in law or historical precedent. The idea that parts of Québec's territory could remain under the administration of the federal government or another province after Québec achieves sovereignty is contradicted both by international law and by recent history.

We must resume a more level-headed discussion. Citizens of good will may sometimes allow themselves to be swept along unconsidered directions, inevitably without any possible positive outcome. There are excesses in which responsible men and women should not indulge and which they must not encourage. The debate on Québec's future must be conducted on the basis of reason, truth and fact.

To be sure, one may defend or oppose sovereignty with passion and conviction, but it is vital that we continue to uphold the democratic values we all cherish. Whatever the result of the next referendum may

be, Quebecers will continue to maintain civilized and cordial relations with each other and with their Canadian neighbours.

In response to the partitionists' arguments, the government of Québec must set the record straight and explain, on the basis of objective, internationally-recognized information, why it would be impossible to carve up Québec's territory.

As we shall see, the argument that if Canada is divisible so is Québec is without legal basis. Québec is a State with a distinct people, political institutions and a precise territory; it existed well before the creation of the Canadian federation, of which it is a member. Québec represents one of the two peoples who created this federation, the founding principles of which have, regrettably, been modified without Québec's agreement and despite Québec's formal opposition.

The contents of this document in no way presume what decision the Québec people will make on their future when the time comes. Its purpose is only to review the rules which have always applied in recent history when peoples such as ours have decided to become sovereign.

I hope that recalling these facts will help maintain the profoundly democratic quality of the debate on Québec's political future.

Jacques Brassard
Minister for Canadian Intergovernmental Affairs

A Sovereign Québec Will Keep Its Borders

Before Sovereignty

As long as Québec is part of Canada, its territory cannot be modified without the consent of the National Assembly. The Canadian constitution is very clear on this point: this guarantee was enshrined in the Constitutional Act of 1871 and has never been challenged since.

This guarantee would obviously continue to hold during the transition period following a “Yes” victory in a referendum, while the Québec government would seek to reach a partnership agreement with Canada. During this negotiation phase, Québec would still be part of Canada and the Canadian constitution would apply as before.

After Sovereignty

At the end of the transition period set by the National Assembly, when Québec would become sovereign, the Canadian constitution would cease to apply within Québec's territory. Québec's territorial integrity would then be guaranteed by well-established principles of international law.

According to these principles, Québec's borders as they were before it became sovereign would be the borders of the new state. The established rule in international law is *uti possidetis juris*, which basically means “You keep what you already have.”

This rule has been rigorously applied in all recent cases in which states have attained sovereignty. For example, when the republics of the former Soviet Union became sovereign states, they kept their territory; indeed, respect for established borders was one of the international community's main criteria for recognizing the new states.

In short, neither the other provinces nor the federal government could use the opportunity to reduce or modify Québec's territory without its consent.

Québec Is Indivisible

Could parts of Québec decide to remain in Canada?

There is no rule of international law that supports this possibility. The idea that, once Québec becomes sovereign, foreign enclaves could be created or parts of its territory could be attached to another country, against Québec's will, is contradicted by international law. This would be equivalent to modifying Québec's boundaries, which is entirely contrary to the rules that have been applied on numerous occasions in comparable situations.

Québec will become a country embracing all its citizens within its present territory or remain a province of Canada. There can be no in-between situation.

Would a municipality or group of municipalities have the right to remain in Canada?

This is totally impossible.

The partition resolutions passed by some municipalities have no legal force. Cities and towns are administrative entities that exist by the will of the National Assembly and the Québec government. They have no power to decide whether they want to be part of Québec or not. The Québec State exercises its sovereignty over the entirety of its territory. Québec's borders are geographical, not linguistic or ethnic.

Québec's territory:

- An area of over 1.5 million km²:
 - three times the size of France
 - seven times the size of Great Britain
 - forty times the size of Switzerland
- Over 10,000 km of borders
- Over 180,000 km² of fresh water
- Exceptional potential for tourism and recreation
- A wealth of natural resources including vast forestry, wildlife, energy, agricultural and mineral resources
- A large part of the St. Lawrence River and the Gulf of St. Lawrence

The question of the rights of Aboriginal peoples

Given their recognized rights, could the aboriginal peoples of Québec decide to remain in Canada?

Aboriginal peoples have rights which are recognized by the international community and under international law.

All international legal texts agree that the rights of aboriginal peoples are exercised within sovereign states. The recognized rights of aboriginal peoples do not in any way call into question a country's territorial integrity, whether the case in question is Québec, Canada or any other State. According to experts on international law, whatever the exact scope of these rights, which are still being defined in various countries and by the United Nations, may be, they cannot be interpreted as including a right to sovereignty.

However, aboriginal peoples must be given an explicit guarantee that their existing rights will be entrenched in the constitution of a sovereign Québec and that these rights could not be modified without their consent. The bill on the future of Québec published before the October 1995 referendum contained a provision to this effect.

As far as Québec's northern regions are concerned, it should be recalled that those lands which were not already recognized as part of Québec under the Québec Act of 1774 were annexed to Québec by constitutional amendments in 1898 and 1912.

Moreover, Section 2.1 of the James Bay and Northern Québec Agreement stipulates that “In consideration of the rights and benefits herein set forth in favour of the James Bay Crees and the Inuit of Québec, the James Bay Crees and the Inuit of Québec hereby cede, release, surrender and convey all their Native claims, rights, titles and interests, whatever they may be, in and to land in the Territory and in Québec, and Québec and Canada accept such surrender”. The Northeastern Québec Agreement contains a similar provision.

These agreements were approved by Acts of the federal Parliament and the Québec National Assembly. Consequently, Québec has full jurisdiction over northern Québec.

Opinions of Five International Experts

In 1991, a special commission of the National Assembly solicited the opinions of five international experts on issues related to Québec's accession to sovereignty. The opinion written by these experts, entitled *L'intégrité territoriale du Québec dans l'hypothèse de l'accession à la souveraineté*, is available upon request. These eminent jurists, who are experts on international law, unanimously agreed that:

- As long as Québec is part of Canada, the integrity of its territory is guaranteed by Canadian constitutional law;
- Québec's accession to sovereignty would immediately bring the principles of international law into play and would not lead to any change in Québec's borders;
- The Québec people could not base its claim to sovereignty on its right to self-determination, but neither would it be prevented by law from achieving sovereignty. Accession to sovereignty is a de facto situation of which international law neither approves nor disapproves: it simply recognizes its existence;
- The extensive rights recognized to aboriginal peoples cannot be interpreted as including a right to sovereignty;
- The protection provided to the anglophone minority under international law has no territorial effect;
- Residents of Québec's border regions do not, as such, enjoy any special protection under international law.

The five experts

Thomas M. FRANCK, Becker Professor and Director of the Centre for International Studies at the New York University School of Law (United States);

Rosalyn HIGGINS, Q.C., Professor, London School of Economics (Great Britain), member of the United Nations Committee on Human Rights;

Alain PELLET, Associate Professor of public law at the Université de Paris X-Nanterre and the Institut d'études politiques de Paris (France), member of the United Nations International Law Commission;

Malcolm N. SHAW, Professor, Faculty of Law, Leicester University (Great Britain);

Christian TOMUSCHAT, Professor, Institute of International Law, University of Bonn (Germany), Chair of the United Nations International Law Commission.

For a Democratic Debate

The current government of Québec has announced that it will hold a referendum on Québec sovereignty if it is reelected. All Quebecers will be called upon to take part in this great debate on their future. Each citizen will express his or her convictions. In the end, the people of Québec will decide.

For this democratic process to be conducted in a serene manner and with a calm aftermath, no matter what the outcome, people must have objective information. Many states have become sovereign over the last fifty years. We need only analyze what has happened elsewhere and take note of the rules which applied. The debate should remain within the realm of political reality.

Gouvernement du Québec, 1997