

## Reforming the Constitution: Part II

# The Case for the Accord

*This is an unofficial translation of a speech by Premier Robert Bourassa in the Quebec National Assembly on June 18, 1987.*

...Mr Speaker, there can be no doubt that Quebec has come out of the 1987 constitutional negotiations a major winner. The gains are substantial. For the first time in 120 years, the Constitution will recognize Quebec as a distinct society. It will at long last, include Quebec in a place of honour: section 2 of the *Constitution Act* (1867).

The Constitution will give Quebec the means to preserve and promote our distinct identity and it will provide a constitutional foundation for the French fact in Quebec. The Constitution will guarantee Quebec the security it needs to develop within the federation. These are the powers we have obtained:

- increased powers over immigration;
- a voice in the appointment of judges to the Supreme Court of Canada;
- increased influence in the reform of federative institutions;
- two guarantees of a right to opt out, one with respect to the amending formula; the second with respect to the spending power.

If we look into this in greater detail, we see first of all that with the recognition of our distinct identity we have achieved a major gain, and one that is not merely symbolic, because the Constitution of our country must now be interpreted in accordance with this recognition.

The French language is a fundamental characteristic of our uniqueness, but there are other aspects, such as our culture and our institutions, whether political, economic or judicial. As we have so often said, we did not want a laboriously spelled-out definition, for the simple reason that it would confine and hamper the National Assembly in promoting this uniqueness. It must be noted that Quebec's distinct identity will be protected and promoted by the National

Assembly and government, and its duality preserved by our legislators.

It cannot be stressed too strongly that the entire Constitution, including the Charter, will be interpreted and applied in the light of the section proclaiming our distinctness as a society. As a result, in the exercise of our legislative jurisdictions we will be able to consolidate what has already been achieved, and gain new ground.

With section 2 we have obtained sure and lasting constitutional means of consolidating our powers in the area of language. Thanks to the drafting of this section, and in particular its safeguard clause, the powers of the National Assembly are maintained and protected. There will be no further erosion of our jurisdiction over language. No regression will be possible. The protection is absolute, as I have so often told the Assembly. Our only path now is the that of strengthening and consolidating the position of the French language.

The only limitations on our jurisdiction can be found in section 23 of the Charter and section 133 of the *Constitution Act* (1867). The right of recourse when necessary to section 33 of the Charter is integrally upheld. In short, and this is of the utmost importance, we have for the first time in 120 years of federalism managed to provide constitutional underpinnings for the preservation and promotion of the French character of Quebec.

With respect to immigration, which is obviously an area of jurisdiction of increasing importance to Quebec given the trends in our demography, we must preserve a delicate demographic balance. First, Quebec's desire to control its own immigration is recognized. Within Quebec, we want to preserve our demographic balance and our French-speaking identity. Outside Quebec, we want to see our proportion of the Canadian population maintained -- this is crucial to our clout as a member of the Canadian federation. Quebec society, a minority in both Canada and North America, is different from the society that surrounds it, and we must have our hands on the levers that control immigration.

The growing number of new arrivals in Quebec must reinforce, not warp, our numerical importance.

The powers in this sector are decisive. Quebec has obtained a guarantee that it may if it wishes choose to receive the number of immigrants, out of the Canadian total, that corresponds to its proportion of the Canadian population plus 5%.

Quebec has also obtained the right to select the immigrants who want to come here, subject, naturally, to the general rules governing admission to Canada and Canadian policy on family reunification. Quebec will be solely responsible for the adaptation and integration of its immigrants.

With respect to the Supreme Court, Quebec as a distinct society wishes to ensure that it is adequately represented on the Court, which is the ultimate constitutional arbiter. The Court's constitutional status has been placed above and beyond the reach of a single level of government. Moreover, because of Canada's systems of law, Quebec sought appropriate representation on the Court, through a guarantee of three judges from this province and a voice in the selection and appointment of judges.

In the agreement of June 3, we obtained that guarantee of three judges, and a commitment from Ottawa that it would from now on choose them from a list of candidates submitted by the Quebec government.

With respect to the federal spending power, we have obtained the best possible framework for its exercise through a guarantee of flexibility and respect for provincial areas of jurisdiction. The exercise of the federal spending power has for the past 30 years been a zone of constant friction between the federal government and the provinces. Quebec has always vigorously denounced the unilateral exercise of this spending power, which has been the equivalent of actual constitutional amendments made *de facto* to the division of areas of legislative jurisdiction.

*WHEREAS the Constitution Act, 1982 came into force on April 17, 1982, following an agreement between Canada and all the provinces except Quebec;*

*AND WHEREAS the Government of Quebec has established a set of five proposals for constitutional change and has stated that amendments to give effect to those proposals would enable Quebec to resume a full role in the constitutional councils of Canada;*

*AND WHEREAS the amendment proposed in the schedule hereto sets out the basis on which Quebec's five constitutional proposals may be met;*

*AND WHEREAS the amendment proposed in the schedule hereto also recognizes the principle of the equality of all the provinces, provides new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and requires that conferences be convened to consider important constitutional, economic and other issues;*

*AND WHEREAS certain portions of the amendment proposed in the schedule hereto relate to matters referred to in section 41 of the Constitution Act, 1982;*

*AND WHEREAS section 41 of the Constitution Act, 1982 provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and the House of Commons and of the legislative assembly of each province;*

*NOW THEREFORE the National Assembly resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.*

The June 3 Constitutional Accord represents a very significant step in the evolution of relations between Ottawa and the provincial governments because it profoundly alters the dynamic we have lived with up to the present. The introduction of the guaranteed right of a province preferring not to participate in a new shared-cost program, to opt out and receive fair financial compensation, is a major step forward. The right to opt out does not mean the end of national programs. It will mean that these programs will be designed with greater respect for the provinces, and that Quebec will have the flexibility it needs to implement measures and programs that, while compatible with national objectives, will more accurately reflect its own needs.

The definition of national objectives will of course have to be done in cooperation with the provinces, and we are assured that they will be defined within the normal framework of intergovernmental relations in Canada, that is, in the framework of the usual political negotiations.

We have taken special precautions to ensure that recognition of Quebec's right to opt out will not mean legal recognition of a federal right to set up programs in provincial areas of jurisdiction. The new section 106(a) is drafted so that it speaks solely of the right to opt out, without either recognizing or defining the federal spending power. To be doubly sure, we insisted on having a reserve or safeguard clause added, specifying that the legislative powers of the federal Parliament were not being extended. So Quebec keeps the right to contest before the courts any unconstitutional use of the spending power.

Lastly, we have gained recognition of our right of veto, our right to say No to any amendment that goes against the interests of Quebec. Constitutional gains would ring very hollow if the Constitution could once again be amended without Quebec's consent. We have covered all the angles, if I may put it like that. Quebec will be entitled to reasonable compensation whenever an amendment is made transferring powers from provincial legislatures to Parliament.

Quebec has a full veto over any change in the following areas: provincial representation in the House of Commons, Senate reform, certain aspects of the Supreme Court, extension of existing provinces into new territory and the creation of new provinces.

These in a nutshell are the benefits we have obtained. A committee of this House looked into Quebec's right to self-determination, and questions were raised about what would become of that right. Before the committee I told the leader of the Opposition that the Liberal Party of Quebec had recognized and still does recognize that right. By freely and voluntarily deciding to adhere to the *Constitution Act of 1982*, Quebec is expressing the right of its people to control their own destiny, as we did more explicitly in 1980, by choosing the Canadian option. In that respect, as in all other aspects of the Meech Lake Accord, there is thus no regression for Quebec, no renunciation, no decrease in our rights and prerogatives.

I would like to quote a resolution adopted by the Quebec Liberal Party. It is still in effect — it is part of our constitutional platform. It was adopted at the orientation

conference in Montreal, held on February 29 and March 1 and 2, 1980, and at the general meeting at Saint-Hyacinthe on July 5 and 6, 1980, when the Minister of Education was leader of this Party. The resolution states that the Liberal Party of Quebec recognizes Quebec's right to determine its internal constitution and to express freely its desire to maintain or to terminate the Canadian federal union. In short, it recognizes the right of the people of Quebec to determine freely their own future. This resolution was adopted in 1980 and has never been changed in the slightest. It is still part of our platform, and the adoption of the Meech Lake Accord makes no difference to it at all.

I have tried to give you an idea of the stride forward that adopting this resolution will accomplish. For 200 years, since the beginning of its history, Quebec has had to struggle. Our society, our people, have made considerable progress, especially since the start of the Quiet Revolution, and above all, over the past few decades, in the economic sector. With the adoption of this resolution we will have greater political stability. True patriotism is the patriotism that expresses itself in the desire to struggle and progress both individually and collectively.

The Meech Lake Accord is, in our opinion one of the most splendid and powerful demonstrations of enlightened patriotism we have seen in this House since its history began. I am proud, and I feel sure my pride is shared by a very great majority of our fellow citizens.