

**REBUILDING THE RELATIONSHIP:  
QUEBEC AND ITS  
CONFEDERATION PARTNERS**

**REPORT OF A CONFERENCE  
MONT GABRIEL, QUEBEC  
9 - 11 MAY, 1986**

*Peter M. Leslie*

Institute of  
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Queen's University  
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contributions that made the conference what it was: a superb review of the evolving situation of Quebec and its changing relationship, constitutional and otherwise, with the rest of Canada.

*Peter M. Leslie*

## 1 INTRODUCTION

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“Government by consent” is generally acknowledged to be an essential characteristic of a free society. Violation of this principle offends against democracy and imperils the political stability of a country whose people are committed to democracy. It should therefore be of great concern to all Canadians that Quebec, alone among the provinces, has never assented to the present groundrules of Confederation. Those rules were significantly changed by the Constitution Act (1982) over the vehement objections of the Parti Québécois government. And the present Liberal government, which is explicitly federalist, also finds parts of the Act unacceptable.

The constitution delimits the powers of the federal and provincial governments both in relation to each other and (since 1982) in relation to the individual. Thus it sets out procedures through which the Canadian people and the various provincial communities shall order their affairs. In so doing it helps determine how those communities shall relate to each other and to the whole. What concerns us here is that the constitution helps establish the character of the relationship between Quebec and the rest of Canada.

At stake is the province's ability to pursue a preferred course of economic, social and cultural development. During the 1960s a set of rapid, far-reaching changes in Quebec society called into question the then-existing relations between francophones and anglophones, between Quebec City and Ottawa, and between Quebec and the other provinces. Constitutional reform was demanded to facilitate and extend the desired realignment of traditional relationships. Not that the constitution itself defines how language groups and the regions are situated relative to each other, but it does establish a framework within which those relationships evolve. In the end, Quebec's initiative – in a sense – bore fruit; but it was bitter. The framework was modified, on federal initiative, by the Constitution Act (1982); and while the other provinces accepted the new rules, Quebec did not.

The Constitution Act (1982) is based on an accord reached in November 1981 between the federal government and the nine provinces having an English-speaking majority. In the preceding year, Quebec had worked closely with seven other provinces to block the federal government's proposals for constitutional reform. Their alliance, however, broke apart when a compromise agreement that was unacceptable to Quebec was worked out. The process by which this result was achieved was traumatic for the Quebec participants, who felt betrayed by their former allies. The Quebec government reacted by reinforcing its isolation. It suspended normal relations with the ten other governments, its Confederation partners.

Since the proclamation of the revised constitution in April 1982, considerable progress has been made towards rebuilding a good working relationship between Quebec and the other governments. However, to some Quebecers (an unknown percentage) the 1982 Constitution Act stands as an unhealed sore and a symbol of the province's exclusion and defeat, "a second Conquest". In substance, the Act is also unacceptable - indeed, no leading figure in Quebec provincial politics has ever endorsed it - because it provides (in the view of the provincial government) an insecure framework for Quebec's continued social and cultural development along lines of its own choosing. For these reasons the Government of Quebec wants to modify the framework imposed upon it in 1982, and to solidify on a new basis its relations with its Confederation partners.

Outside Quebec, however, many people resent what they regard as the province's disproportionate influence within the federal government; and most Canadians probably assume that the partial accord of November 1981 resolved the constitutional issue once and for all. There is no sign of public enthusiasm for reopening constitutional talks.

This situation points to continued uncertainty about Quebec's place in Canada today. Part of the uncertainty is about the prospects for a constitutional settlement acceptable to the Quebec government. But there are also other issues of a less tangible character, especially the future of Quebec nationalism, and the evolution of Quebec's working relationship with the federal government and with the other provinces. These matters must be seen in context with changes in the Quebec economy, changing cultural patterns, and changes in how Quebecers view their own situation in Canada and North America.

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To obtain a cross-section of informed opinion on these matters, and to further the process of rebuilding the relationship between Quebec and



its Confederation partners, the Institute of Intergovernmental Relations (of Queen's University), the Montreal newspaper *Le Devoir*, and *l'École nationale d'administration publique*, organized a conference at Mont Gabriel, Quebec, 9 to 11 May 1986. Of the 65 participants, half were from Quebec and half from the rest of Canada; there was equal representation from government and the universities, and a slightly smaller number from a variety of other organizations.

Given the nature of the group, the breadth of the conference agenda, and the openness of the discussion, the Institute of Intergovernmental Relations decided to publish the present report, summarizing conference proceedings. Its purpose is to provide a broad survey of the basic issues concerning Québec's place in Canada today.

Gil Rémillard, Québec's Minister of International Affairs and Minister responsible for Canadian Intergovernmental Affairs, gave the keynote address, setting out Québec's conditions for participating in a new constitutional accord (for a full text, see Appendix A). Mr. Rémillard's speech, which was a constant point of reference for the entire conference, was followed by a session exploring changing political attitudes and priorities in Québec, with special emphasis on the values, behaviour patterns, and concerns of youth, for whom the Quiet Revolution of the early 1960s, the October Crisis (1970), and perhaps even the election of the Parti Québécois (1976) are historical events rather than personal experiences. In this session participants discussed, among other things, the strength and the character of Québec nationalism, a topic which was to be a recurrent theme in other sessions as well. The first day of the conference concluded with an address by the Honourable Benoit Bouchard, Secretary of State of Canada (see Appendix B).

The second day consisted of three sessions dealing with the federal and provincial governments' policy roles and responsibilities – first in language matters, then in social affairs, and finally in matters of economic development and the control of economic institutions. This order of topics was chosen because it follows major shifts, over time, in the focus of Québec nationalism. This seemed appropriate for a set of sessions the overall purpose of which was to explore the political implications of linguistic and cultural dualism in Canada. In the past, Québec has wanted to pursue goals toward which its Confederation partners appeared indifferent, or even opposed; and the other ten governments seemed (to Québec) to agree on objectives that threatened the province's autonomous development. Duality of purpose seemed to extend across the whole policy spectrum. What is the situation now? Do Québécois continue to see dualism where other Canadians see a more complex pattern of diversity? It did not appear useful to ponder such

questions in the abstract. Instead, three sessions – the whole of the second day of the conference – were set aside for discussing government roles and responsibilities in specific policy fields: language, social affairs, and economic development.

The final session, held on the third day of the conference, focussed on constitutional issues. Discussion crystallized around Mr. Rémillard's list of five conditions for Quebec's acceptance of a revised Constitution Act, plus constitutional guarantees of the rights of linguistic minorities (endorsed by Mr. Rémillard, but not stated as one of the five conditions).

Some of the issues that were discussed during the first two days of the conference, were re-visited during the final session. For this reason, in reporting the conference proceedings, it has seemed appropriate to group together the comments made on each of the major topics, rather than to follow exactly the course of the discussion. Nonetheless, a roughly consecutive order is preserved.

Since most of the proceedings were in private, the report – though prepared on the basis of a full record of the discussion, to ensure accuracy – generally avoids identifying individual participants. Exceptions to this rule have been made only for the speeches of Mr. Rémillard and Mr. Bouchard, both of which were open to the press, and a presentation by Thomas J. Courchene, which was subsequently published.

## 2 CONFERENCE HIGHLIGHTS

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1. Quebec's Minister for Canadian Intergovernmental Affairs, Gil Rémillard, set out five conditions for Quebec's participation in a new constitutional accord:
  - Explicit recognition of Quebec's character as a distinct society
  - Guarantee of extended powers for Quebec in the field of immigration
  - Limitation of the federal government's spending power
  - Changes in the formula for amending the Constitution of Canada, in effect giving Quebec a veto power
  - Participation by Quebec in the nomination of judges to the Supreme Court of Canada
2. Participants recognized that constitutional issues have a low profile among the Quebec public today, as they do in other provinces. However, most thought that Quebecers' apparent lack of concern with "the national question" was deceptive. Quebec nationalism may easily flare up again.
3. Both Mr. Benoît Bouchard (Secretary of State of Canada) and Mr. Rémillard emphasized their governments' commitment to extending the rights of official language minorities. Mr. Rémillard proposed strengthening language guarantees in the Charter of Rights and Freedoms (Section 23), but this was not one of the five conditions he set out for reaching a new constitutional accord.
4. All conference participants recognized that in economic and social affairs Quebec has changed markedly over the past 25 or even 10 years; thus there is no question of returning to earlier patterns of

relations between language communities either within Quebec or in Canada as a whole. "Rebuilding the relationship" will involve creating something new, not reconstructing the old. However, most participants considered that Quebec's goals can be realized under the present division of powers, except in the case of immigration and, possibly, the language provisions of the Charter. Therefore, when discussion focussed on the constitution, the emphasis was on finding ways of giving Quebec adequate guarantees that the existing framework would not be significantly altered without its consent.

5. Some participants urged that the distinction between economic issues, which everyone acknowledges are important, and constitutional issues, which most people would like to forget about, is a false one. Canada's institutional structure may be inadequate to meet its economic purposes. In any case, it will be necessary for the federal government to design an economic policy that satisfies diverse regional interests. If this is not done, political discontents will build up rapidly, challenging the legitimacy of the federal government.
6. There was consensus that it is important to resolve the constitutional impasse between Quebec and the rest of Canada in the very near future, while political circumstances are perhaps uniquely favourable. A solution should be negotiated while the issue has a relatively low profile, because agreement can be more easily reached when passions are not inflamed.
7. To reach a constitutional settlement with Quebec it will be necessary to restrict the agenda to the short list enunciated by Mr. Rémillard.
8. Of the five items, three received little attention from participants: recognition of Quebec as a distinct society, expanded powers in immigration, and participation in nominating judges to the Supreme Court of Canada. It is likely that most participants thought these issues could be fairly easily resolved.
9. Several participants thought that limitation of the federal spending power may be the most divisive item on Mr. Rémillard's list. Quebec is evidently more strongly opposed than other provinces to implementing national standards through the use of the spending power. However, another concern is that the federal government may withdraw from existing programs, thus thrusting spending responsibilities upon provincial governments. This is an issue where

all provincial governments may have common cause against the federal government.

10. There appeared to be consensus that the most promising way of meeting Quebec's concerns about the amending formula was to negotiate a solution with two major elements. One would be to strengthen the fiscal compensation clause already in the constitution, which comes into effect when a province opts out of an amendment applying to the other provinces, within the areas of education and culture. However, it was acknowledged that fiscal compensation cannot protect Quebec's interests in cases where infringement of provincial powers is not at issue, for example in amendments affecting the structure of federal institutions. To meet this concern, voiced by Mr. Rémillard, several participants supported expanding the "unanimity list" (i.e., items requiring the endorsement of Parliament and of all 10 provincial legislatures, as set out in Section 41 of the Constitution Act, 1982.)

### 3 REBUILDING THE RELATIONSHIP

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#### A False Problem?

Let's start with the most basic question of all. Was the conference based on a mistaken premise? In three different ways, the organizers or the participants were admonished that they were grappling with a false problem.

The first such suggestion came well before the conference from someone (a provincial government official) who wrote:

In terms of the overall theme of the Conference, I think it over-emphasizes the differences between Quebec and other governments in Canada. Of course, it would certainly be useful to gain a fuller understanding of Quebec's position and "mood" on social, economic and constitutional issues, but I do not think it has to be set in terms of "re-establishing normal ties between Quebec and its Confederation partners."

Since this comment was made by letter and not at the conference, others were unable to respond to it, and one cannot judge how many shared this opinion. Probably some did - especially some of the those who were invited but who (unlike the letter-writer) decided not to attend. The more this happened, the less representative the group that assembled at Mont Gabriel. This is troubling, but even more troubling is the fact that most non-Quebecers may view "rebuilding the relationship" as an already-accomplished task, whereas most Quebecers may see it as incomplete. It is therefore significant that at the conference, almost all the Quebec participants appeared to take for granted that "normal ties" cannot be deemed to obtain until there has been a constitutional settlement.

A second warning that the conference theme mistook reality was voiced by Thomas J. Courchene, whose presentation to the conference has subsequently been published.<sup>1</sup> Courchene warned:

Quebec is not interested in "rebuilding" the traditional relationship at either the economic or the political level. Rather, the province is dedicated to building a strong financial and economic base in order to look outward to the rest of the world.

Participants did not query this. All recognized the economic vitality of Quebec - its forward-looking and outward-looking stance. But most of those present also evidently recognized that to build a new economic relationship with the rest of Canada and with the rest of the world demands that Quebec have a wide range of economic powers, giving it a degree of control over economic processes and institutions. In other words, Quebec's economic goals have a political and constitutional dimension. (This is the case also with other provinces.) The very fact that the goals are new ones gives pertinence to rebuilding Quebec's political and constitutional relationship with its Confederation partners, though necessarily on a different basis than was acceptable in the past.

The most serious challenge to the overall conception of the conference came from those Quebecers who asserted that the public mood in the province would not tolerate a return to constitutional issues, any more than would the public mood in the rest of Canada. A Quebec businessman said:

Just when exhaustion [caused by the intense and fruitless political debates of the past few years] is giving way to stability and enthusiasm, you invite me to come and participate in reopening the dossier of our collective insecurity. I'm not interested. Recalling the two solitudes is outdated. The presumed isolation of Quebec is an abstraction. The re-emergence of Quebec is going on, not in the Ministry of Intergovernmental Affairs, but in the universities and the factories of the province....The state is giving way to the individual, it is privatising, deregulating, rationalising, leaving to private enterprise responsibility for wealth creation....I don't want a new constitutional debate and especially not a new election or a new referendum on the subject. Our job now is to contribute to material well-being.

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1. "Market Nationalism", in *Policy Options*, 7:8 (October 1986), 7-12.

These sentiments were given added force by reports of survey data showing that Quebec youth today are largely uninterested in politics, federal-provincial relations, and relations between language groups. They are preoccupied by personal goals; they want most of all to feel good about themselves ("*se sentir bien dans sa peau*"). They want peace and harmony, they want material well-being. Family relationships, personal friendships, and work matter most to them. Among public issues, the public as a whole (i.e., all ages) gives top priority to peace (75 per cent), pollution (70 per cent), unemployment (70 per cent), and inflation (65 per cent); next come the future of the French language (59 per cent), federal-provincial relations (35 per cent, with younger respondents showing much less interest than older ones), the future of English in Quebec (30 per cent), and Quebec independence (25 per cent).

One participant, a specialist in the communications media, stated his belief that the constitutional debate would not again become a priority in Quebec in the near future. When and if it does, the "scenery" [*"le décor"*, the cultural context] will have changed. To understand Quebec youth, one must see what television they watch and what radio stations they listen to, he said. The music that dominates is rock, and the rock is in English. Young people listen mainly to English stations; young francophone performers sing 90 per cent of the time in English. He went on:

Soon it could happen that in Quebec there is no distinct society; and the constitutional debate presumes that Quebec society is different [*"spécifique"*]...Canadian unity could come about through the United States, as both groups [anglophone and francophone youth] listen to American rock and immerse themselves in the cultural products that come to us from the United States....In this context, the debate on cultural sovereignty takes on full meaning, becomes more significant than a mere slogan. What is at stake here is much more important than a veto power for Quebec, or any opting-out clause.

In the discussion that followed, several participants expressed doubts, not about the accuracy of such observations concerning the public mood in Quebec, but about the inferences that non-Quebecers might be tempted to draw from them. Most of the comments were about the latent strength of Quebec nationalism, as will be reported below. One comment, though, was along quite different lines:

It is perfectly fine to pursue private goals. But there is a relationship between personal goals and the political structure, or



between non-alienation and the make-up of collective institutions. Most of us at the conference are probably aware of this, but many people are not. What is appalling about [the Quebec businessman's] presentation is that it makes a virtue of avoiding debate on political structure, political culture, and political formations. This is not "perfectly fine" for Quebecers, or for anyone. I am concerned to show how political organization is important to the sense in which we enjoy life, and get out of it what is important to us. It is good to be aggressive, as Rémillard was, about describing political structure as something within which to create something of value.

The response: "I agree 90 per cent with what you say. But let's have bread and butter for a while, then we may come back later and touch up the political structure."

### **Quebec Nationalism**

Nationalism remains a vital if hidden force in Quebec society; it can be expected to thrust itself forward again, giving impetus to a major political movement if francophone Quebecers feel themselves threatened by events within or outside the province. Such was the consensus among conference participants; some were more emphatic about it than others, but none voiced disagreement. The consensus was (appropriately enough) articulated mainly by the Quebecers – anglophone as well as francophone – but it was obvious that many others were very receptive to their message.

Can people be bored with politics and the constitution, and still be susceptible to nationalist appeals? Many participants affirmed, in effect, that this exactly describes the Quebec situation today. Over the past quarter century, Quebecers have reordered their life as a collectivity. They take pride in their accomplishments. They have adopted policies and created institutions that express a distinctive set of values and further their collective goals. They feel moderately secure about these things now, but any challenge to what they have created, whether in the cultural field or in economic affairs, would touch off a sharp reaction, bringing to the fore again "the national question" and the constitutional issues that crystallize it. A few quotations will illustrate this.

A former union leader:

I do not think that constitutional issues are a priority for the unions. However, there is something underneath that's

smouldering. If anything threatens the rights of the unions, or of the citizens, nationalism will reawake. If an attempt were made to remove Quebec's control over the language of education, or if there is an attack on the provisions of Bill 101 [Quebec's language law, passed in 1977] regarding French-language signs, there will be a new mobilization of opinion on national questions.

**A business consultant:**

I am concerned that people outside Quebec will think there is no more nationalism here....Nationalism is viewed by Quebecers as a positive force. It can take many forms. Young entrepreneurs are branching out, buying anglophone firms, spreading across Canada and internationally. When the federal government introduced Bill S-31 [in 1982, a bill proposing to limit provincial ownership of interprovincial transportation firms], seeking to attack the Caisse de Dépôt, a group of francophone businessmen launched a campaign against the legislation, forcing the government to drop it. The business community in Quebec has assumed responsibilities formerly exercised by government, in defending the interests of Quebec. If ever in the future there is an attack on fundamental Quebec institutions, like the Caisse, these [business]men will react.

**An anglophone Quebecer:**

The moment Quebec feels its capacity to be different is attacked, it will react.

These are only three of many statements of a similar character. Throughout the discussion of policy roles and responsibilities in language matters, social affairs, and economic development – and of course in the discussion of the constitutional agenda – awareness of the continuing importance of nationalism was ever-present. As one participant put it: "Quebec nationalism has evolved to a considerable degree....I don't think nationalism has receded, it has changed character and focus."

**Language**

A lone voice challenged the whole thrust of federal language policy, for which there is constitutional support in the Canadian Charter of Rights and Freedoms. The essence of the criticism was that whereas more than 90 per cent of anglophones are unilingual and 80 percent of francophones

too are unilingual, language policy in Canada is defined by bilinguals. The present language regime is one that responds to the needs of minorities, but a sensible language would serve, instead, the needs of *le Québécois majoritaire*. (A *majoritaire* was described as a person who has never been forced to choose between his culture and his career, has never had to earn his living in a second language, and has never learned that to speak his own language means to be reprimanded, ineffectual, or marginalized; he is a person who requires only his own language to satisfy all his daily needs; for him, a second language is a hobby.)

It would be reasonable, said the critic, to have a language policy the goal of which was to avoid imposing minority status on the more than 20 million Canadians who are now unilingual. In this context it makes sense not to maximize bilingualism, but to minimize it. Canada does not need institutional bilingualism, but a *bilinguisme touristique*, to facilitate the exchange of bad English and bad French across the country. Instead, the aim of federal policy has been to help out the linguistic minorities (but only the anglophone and francophone ones), by declaring French and English official, and eligible for subsidies. But these policies cannot fundamentally change the position of the francophone minorities outside of Quebec, who are an endangered species; for them, French is less and less important as a means of earning one's livelihood and making one's career. The only place where this can occur is in Quebec, and even there a policy of official support is needed. Dignity demands that big business in Montreal should welcome *le Québécois majoritaire*; any other goal for language policy would be a *trompe l'oeil* or delusion. The Pepin-Robarts Commission (the Task Force on Canadian Unity, 1979) understood this, and made timid steps in this direction, but was denounced on the grounds that a minority cannot afford to leave its fate to the whims of a majority. Conclusion: national reconciliation is a desirable policy, but if it does not occur through a language policy that gives *le Québécois majoritaire* his rightful place, it will last only a short time.

No one supported these arguments, but they deserve attention because they summarize the case for the language policy of the Parti Québécois as implemented through Bill 101, passed in 1977. Certain provisions of that law were subsequently invalidated by Section 23 of the Charter of Rights, dealing with language rights in education. Present Quebec policy, as Mr. Rémillard made clear, is to strengthen and extend Section 23. In this respect it represents an about-turn from PQ policy. The Liberal government does not regard language guarantees benefiting Quebec anglophones, as well as francophones in other provinces, as something that would weaken a fundamental policy aim, namely to support the use of French as the primary (but not the exclusive) language of work within the province. This aim is one that is shared by the Liberals

and the PQ. Unfortunately no one at the conference challenged the contention, implicit in the critic's attack on federal policy, that stating and protecting the rights of linguistic minorities is inconsistent with a policy geared to the needs of *le Québécois majoritaire*.

This surely is the nub of the continuing controversy over language policy in Quebec. But conference participants ignored the controversy. Only two persons offered a rejoinder to the criticism of policies to support bilingualism. One said that if policy reinforces unilingualism the two groups could scarcely interact with each other, and certainly not on a basis even approaching equality. The other, a Quebec anglophone, gave a much fuller response:

Why should Canadians support the minorities? The answer is, we are engaged in "rebuilding the relationship" between the language groups. That is, we are engaged in a process of nation-building. Constitutional talks are a nation-building exercise and should reflect not only the existing situation but also where we want to go, our aspirations. As a Quebecer, I'm aware of the problem of two solitudes, where the groups interact through their elites when they have to. Then no real relationship develops, people interact on the basis of stereotypes. Sure, we are concerned about trade and economic development. But if this is all that concerns us, Quebec may decide its real relationship is with the United States. Quebecers may take the attitude, "Let us do what we want to within our borders, to the extent we can, and minimize our relationship with the rest of Canada." The challenge here is to English Canada. Do they want to address our situation [in Quebec]? Quebecers must want to feel part of Canada; the rest of the country has to offer Quebecers a sense of belonging.

One thing that became abundantly clear at the conference is that the Quebec anglophones and the francophone minorities in other provinces have nearly identical interests. They are cooperating in an effort to obtain stronger constitutional guarantees for minority language rights. The Quebec anglophones can no longer rely, as they once did, on their economic power to ensure protection of the rights they have acquired within the province. Thus, although their situation is less precarious than that of francophones outside Quebec, they are now among the most articulate proponents of administrative, legislative, and constitutional action to extend the provision of public services (especially education) to linguistic minorities.

Most of the discussion on language policy focussed on the condition of the minorities and on steps to be taken to improve it. Several

participants were obviously delighted at Mr. Rémillard's proposal to clarify and strengthen Section 23 of the Charter, both by guaranteeing linguistic minorities administrative control over their own school systems, and (more tentatively) by eliminating the phrase "where numbers warrant", which narrows the right to education in the minority language. Participants also welcomed Mr. Bouchard's statement expressing extended support at the policy level, perhaps especially through the use of the spending power, for the rights of linguistic minorities; these plaudits were, however, qualified by noting the shortcomings of federal administrative action. Finally, focussing on the provinces, Ontario's recent extension of French-language services was seen as a very positive step, counterbalanced to some extent by developments in other provinces. Recent court decisions gave cause for concern. *Overall, the most strongly argued view was that improved constitutional guarantees for minority language rights are a priority item, and that constitutional declarations must be followed through with appropriate legislative and administrative action.*

There was fairly widespread recognition that, even though progress has been made in relation to minority language education rights, Section 23 of the Charter remains to some extent unapplied. One participant asked what steps should be taken to ensure that it is fully put into effect. Is there a role here for the federal government to play? There were various responses. One was that while Ottawa cannot act authoritatively in the field (as the questioner had recognized), perhaps it can supply financial assistance. (It is not clear whether the suggestion was that the federal government should extend its subsidies to the provinces for minority language education, or should support litigation under the Charter to get favourable court decisions.) Another suggestion was that the federal government could refer the matter directly to the courts, in order to get an early ruling. Another proposed step toward putting Section 23 into effect - this time involving interprovincial negotiation rather than federal action - would be for Quebec to bargain for fuller application of Section 23. (Here, however, the interests of the Quebec anglophones and the francophones in other provinces might diverge. Part of Section 23 will not come into effect until assented to by Quebec. The province might conceivably promise to give that assent - but only if the other provinces applied the clause more effectively. In other words, Quebec might make certain anglophone rights in Quebec conditional upon recognition of francophone rights elsewhere.)

## **Social Policy and the Federal Spending Power**

Debates over social policy – mainly income security and health care – are difficult to disentangle from controversies over the spending power. The reason is simple: conditional grants are a major device through which the federal government becomes involved in fields that are primarily or exclusively under provincial jurisdiction. Social policy is a case in point. Thus, at Mont Gabriel, when the conference agenda focussed attention on social policy, participants spent much of the time debating the spending power.

All those who contributed to the discussion recognized that present patterns in social policy are being challenged by fiscal constraint and will increasingly be so in the future. One said:

The mechanisms of fiscal federalism that we have in place are all expenditure-oriented, entitlement-oriented, and carry an upward bias. They are not designed to reduce costs, control expenditures, bring entitlements into line with the economy.

This speaker concluded that deconditionalizing the grants system would be desirable. However, others favoured a strong federal presence in social affairs through the spending power, precisely because they thought that in its absence the provinces would cut back levels of service. It appears to be a fair generalization that those whose primary goal was to support the income security and health care systems defended conditional grants, while those who were visibly more worried about program costs opted for provincial responsibility and federal withdrawal.

One may reasonably ask how (or whether) this debate has anything to do with rebuilding the relationship between Quebec and its Confederation partners. The answer may have been given by a speaker who outlined some of the major steps Quebec had taken to establish a set of social policies that conformed to its own value-system or culture. He pointed out that the federal government became heavily involved in social policy, partly through constitutional amendment (unemployment insurance, 1940; old age pensions, 1951; and supplementary powers in the pensions field, 1964), and partly through conditional grants. None the less, while the welfare state was being constructed, Quebec had sufficient latitude to go its own way to some extent. Administrative arrangements were made (pensions, family allowances) that gave Quebec an opportunity to adapt federal programs to its own needs; and some of the reforms initiated in Quebec eventually influenced policy design in the rest of Canada (social assistance, income security, health care services, and social services). In short, Quebec was an innovator, and as long as

federal fiscal transfers were growing, Quebec was able – in spite of Ottawa's often unwelcome interventions in the social policy field – to follow its own lead.

Now, however, (the speaker suggested) the situation has changed. In a climate of financial constraint, earlier conflicts may easily be exacerbated. The federal government is simultaneously tightening the conditions attached to some of its fiscal transfers, as in the case of the Canada Health Act (1984), and disengaging itself financially from the programs that it had initiated at an earlier time. The debate on universality has yet to be engaged in earnest. The speaker appeared to suggest that as the federal government attempts seriously to come to grips with emerging fiscal problems related to social policy, which sooner or later it cannot avoid doing, it is likely to take decisions that will disrupt the system of income security, social services, and health care that Quebec has been able to build up over the years. As long as enough money was available for Quebec to adapt and complement federal policies in ways that gave expression to its specificity, or cultural uniqueness, Ottawa's presence in an area of primarily provincial responsibility was tolerable even to Quebec; but in an era of reduced fiscal room for manoeuvre, better protection against federal incursions into areas of provincial jurisdiction may be essential.

Quebec participants took for granted that the field of social affairs illustrates Canadian dualism. In other words they assumed that cultural differences between Quebecers and other Canadians gives that province a much stronger incentive to assert control over the social policy field than is the case with other provinces. As the session chairman pointed out, one cannot grasp the essence of the subject (social affairs) unless one recognizes to what an extent Quebec's institutions are distinctive ("*originales*"). No one at the conference challenged this assumption, but anglophone participants paid little or no attention to it. The discrepancy illustrates what Quebecers call "a dialogue of the deaf". The anglophones talked about fiscal problems, about citizens' entitlement to income security and public services, and about ways of sorting out the conflict between them. By contrast, the francophones were preoccupied by cultural distinctiveness, the extent of Quebec's capacity to respond to public demands reflecting needs and preferences specific to Quebec, and how fiscal constraint may make this problem more acute than in the past.

One has to ask whether, if anglophones and francophones more or less routinely talk past each other on social policy and the spending power, this tendency is likely to stand in the way of rebuilding the relationship between Quebec and its Confederation partners. Conference discussion may be a fairly good guide on this question. The discussion demonstrated that controversies over the exercise of the

spending power have shifted focus in the past few years, and that the more recent concerns are ones where the provinces can be expected to take a common stand. Depending on the position taken by the federal government, this may augur well for reaching a constitutional settlement – at least on spending power issues.

To explain this, it will be useful to note that three main concerns were interwoven in conference discussion on social affairs and the spending power, as follows.

- One was the traditional concern over the introduction of new programs that may not fit provincial priorities, and the procedures that should be observed (whether constitutionally required or not) when the federal government undertakes a new initiative in the field.
- A second concern was the extent or specificity of conditions that, constitutionally, can be attached to federal transfers to provincial governments, an issue that has been highlighted by the Canada Health Act.
- Finally, participants discussed what can be done to ensure that the federal government does not unilaterally reduce its financial commitments to programs it has launched in the past.

Conference discussion did not clearly distinguish these three aspects of the subject, but it will be helpful to separate them here.

### *New Programs*

When the participants spoke of the introduction of new programs, the debate on the spending power had a very traditional ring to it. Francophone participants were far more likely to oppose, on principle, the use of conditional grants. Anglophones were, as the stereotype predicts, much more inclined to take a “flexible” or “pragmatic” view. While several of them argued against conditional grants as being inappropriate to the needs of the day, few if any wanted to prohibit them altogether, or for all time. One, referring to Mr. Rémillard’s desire to limit the spending power, said he hoped that the Quebec position would not go so far as to cripple the way in which Canadians have been able to achieve, within a somewhat restrictive constitutional structure, the advancement of social welfare policies and programs. He noted that several factors – among them the thrust for a free trade agreement with the United States – threaten standards already achieved in the social policy field, and he explicitly welcomed a continued federal presence



through conditional grants. Not only this person, but some others too, supported a relatively or entirely unrestricted spending power on the basis of several overlapping arguments: that all Canadians should, as an element of citizenship, be entitled to a high standard of public services; that nation-building considerations justify the federal government's inducing the provinces to provide services up to a defined national standard; that fiscal disparities among the provinces require an extensive system of federal payments to provincial governments including conditional grants, equalization grants alone being inadequate to the purpose; and that "client groups" would be nervous if the federal role were restricted to making unconditional grants such as equalization payments.

Responding to this line of argument, one participant (an anglophone) said that conditional grants, while arguably necessary in the past, have probably outlived their usefulness. They are not a good control mechanism, because there are always ways to get around them; money can be diverted to other purposes unless a very rigid set of conditions is set up. Is it not time to ask whether we need conditional grants any more? The immediate rejoinder, also by an anglophone, perfectly illustrated the pragmatic approach.

My answer is yes: it's *always* time to ask if we should get rid of conditional grants. It is also always time to ask whether we should reconditionalize certain grants. To constitutionalize these things is to place the dead hand of the past upon us. Duly elected governments should negotiate every three or five years with each other, for example on the application of the principles contained in Section 36 of the Constitution Act (1982) [the equalization clause]. Judicializing equalization formulas, or any other aspects of fiscal relations, is something about which I have very grave doubts.

Another said:

I don't believe in "constitutional determinism". Socio-economic factors should determine not only what our social policies are, but who makes them. Canada faces three problems in this field: a fiscal challenge (the deficit), a demographic challenge (the elderly will make up an increasing percentage of the population), and a technological challenge (new methods or techniques are devised; our social programs must adapt). The constitution has to allow us to set the right social policies; no one pattern is satisfactory.

Provinces must be able to experiment. These three challenges will [should?] shape our social programs, not the constitution.

These interventions strikingly illustrate the approach, or style of argument, adopted by the non-Quebecers. By contrast, the Quebecers (among whom only francophones participated in the discussion of social policy) evinced no interest in arguments suggesting that conditional grants might be useful or appropriate in some circumstances but not in others. They took the view that if citizens want certain kinds of public services or insist upon the observance of certain standards, they can and should address their demands to their provincial governments. Canada is a federation, not a unitary state, precisely because preferences vary by region or province. If a province cannot meet its residents' demands because it is poor relative to other provinces, the appropriate remedy is equalization, not centralization. Conditional grants may be tolerable – that will depend on how specific the conditions are, and how much money is available – but never desirable.

The difference in approach between Quebecers and others has a very practical consequence. While at any moment in time, or in relation to a specific issue or program, Quebec and other provincial governments make take a common stand, the latter are likely to formulate their position on an issue-by-issue basis. Thus, from Quebec's point of view, they are unreliable allies against federal incursions into areas of provincial jurisdiction. To Quebecers, it is much safer to constrain the spending power through constitutional prohibitions enforced by the judiciary.

The importance of having provincial powers clearly set out in the constitution was underlined by a francophone who argued that political agreements or administrative arrangements are an inadequate basis for provincial autonomy. The fragility of such arrangements was illustrated, he said, by the federal government's introduction of the child tax credit in 1977-78. The tax credit, while inoffensive in itself, had the effect of reducing the proportion of the family allowance payments that the provinces could redistribute among recipients according to family size. An agreement was in place allowing the provinces – in practice, only Quebec – to do this. However, a large part of the principle contained in the administrative agreement was nullified by the introduction of the child tax credit. This could not have happened if the scope of provincial powers had been set out in the constitution, as Quebec had sought to have done at Victoria in 1971. *This case may also explain, the speaker said, why Quebec would like to constitutionalize the "Cullen-Couture" administrative agreement on immigration (1978).*

Non-Quebecers may be against conditional grants, and at Mont Gabriel many of them were; but the conference also showed that non-Quebecers tend to prefer political mechanisms over constitutional and judicial ones as devices for determining the structure of the grants system. A new constitutional accord, if one had been drafted at Mont Gabriel, would probably not have included a blanket prohibition against conditional grants, or even have set up many procedural hurdles for the introduction of new shared-cost programs.

In brief, when discussion focussed on the traditional problem relating to the spending power – the introduction of new programs – Quebecers and non-Quebecers approached the subject from different angles even when they preferred unconditional grants over conditional ones. On this aspect of the constitutional agenda, the two groups seemed far apart. However, the discussion also revealed that new areas of controversy relating to the spending power have opened up and have even to a large extent supplanted the traditional concerns over its exercise. Attention now focusses much more on prohibiting the attachment of stringent conditions to federal transfers, and on finding some device to lock the federal government into its fiscal commitments to the provinces, at least for some fixed period of time. On these two aspects of the spending power issue – if conference discussion is a reliable guide – divisions between Quebecers and non-Quebecers scarcely exist.

### *Stringency of Conditions*

There was quite a lot of discussion about the legitimacy and indeed the constitutionality of shared-cost programs that attached very detailed or restrictive conditions to fiscal transfers. The tighter the conditions, the more doubtful their constitutionality; indeed, it was noted, litigation is now under way, challenging the spending power. It was suggested, apparently with regret, that this had occurred because the federal government had recently been too aggressive in exercising powers having a doubtful constitutional basis. Developing the point, the same person who had referred to the child tax credit and the family allowances went on to say that the design of conditional grants schemes, notably in health care, had formerly sought out a very narrow line between uniformity and diversity.

As initially formulated, the conditions were fairly general in character. But to the four conditions originally applying to medical insurance (universality, accessibility, portability, and administration by a public agency) the federal government had added a fifth, comprehensiveness, in 1977, when introducing Established Programs

Financing. And with the Canada Health Act, 1984, Ottawa began to oversee the administration of medical care.

Adding a fifth condition broke the delicate balance. I was surprised at the decision to do this, because predictably it would provoke a challenge, whether by the Ontario Medical Association, or by a provincial government. There is the danger that with a court decision, where there will be a winner and a loser, one will throw out the baby with the bath water. While I understand the desire to have a workable sanction, in imposing it Ottawa went much too far. It took a big risk, stretching the elastic of federal power to the breaking point. I am aware that for some people, Section 36 of the Constitution Act (1982) was intended to support both equalization payments and conditional grants. This illustrates the same tendency to stretch federal powers to the limit.

It would be incorrect to say there there was a consensus view on these matters at the conference, but opinion did seem preponderantly against shared-cost programs with conditions as specific as those in the Canada Health Act. Even so, it is doubtful that a constitutional amendment prohibiting the attachment of such conditions would have been supported. One person said:

I wonder if it would be wise to restrict the federal power to make conditional grants. The courts are about to rule on their constitutionality; we should wait for the courts' decision. In any case, have we not been well served by governments' reticence to challenge the spending power, and to seek clarity? Where the constitutional basis of action is doubtful or uncertain, governments usually seek to reach agreement.

Another, responding to the suggestion that a decentralized system is more efficient than a centralized one, because the provinces can experiment more with program design, said:

The problem with regarding the provinces as laboratories for social experiments is that too often the technicians come in the image of William Aberhart. There are indications of what would happen if we did make all grants unconditional. Alberta is adopting the U.S. practice of having private commercial hospitals; several provinces might move in that direction. Extra-billing still exists in some provinces, suggesting that the conditions written into the Canada Health Act are not stringent enough.

In the case of post-secondary education, the provinces are underfunding, and are not carrying out their responsibilities. Several provinces now spend no money of their own on post-secondary education. There should be sanctions against provinces that underfund. We should re-conditionalize the federal grant. One reason for doing so is that the anglophone population (at least) is highly mobile among provinces; this produces externalities in the sense that provinces think they can import the talent they need, or conversely if they do educate the population, some of these people will move to other provinces. Quebec, though, is a special case. There are sensitivities here that are not paralleled elsewhere, and there is also less tendency for people to move out. This means that special arrangements may be required, perhaps opting out.

These were dissenting views. Most participants apparently regarded the attachment of very specific conditions to fiscal transfers, as in the Canada Health Act, as an abuse of the spending power.

#### *Federal Back-out*

Mr. Rémillard was especially emphatic in his condemnation of the federal government's tendency to reduce its financial contribution to programs that had been initiated through conditional grants. In particular, he criticized Bill C-96 (subsequently passed by Parliament), which cut back the rate of growth in federal payments under the Established Programs Financing scheme, covering health care and post-secondary education. His comments underlined a very basic fact about the spending power: the problem now, from the provinces' point of view, is generally how to keep Ottawa in, not how to keep it out.

Surprisingly, relatively few of the participants at Mont Gabriel dwelt on this. However, it was recognized that from a provincial perspective, the worst situation is one where the federal government attempts to impose national standards and simultaneously cuts back the level of transfers. This can, as one person noted, raise a legitimacy problem:

Conditional grants formerly covered half the cost of the programs concerned. With the current arrangements, financing is divorced from levels of service [and fiscal transfers]. To what extent can Ottawa impose standards when its financial contribution drops? Or rather, how far can its contribution drop, and national standards still be defined and applied? Is there a breaking point?

No one attempted to answer this question; perhaps it was too obviously rhetorical. However, it pointed to a problem that one would be irresponsible to ignore. It is also evident, even if no one at Mont Gabriel made a point of saying so, that Quebec and the other provinces are in an identical situation when the federal government backs out of its financial commitments. All would be happy to see some way of ensuring that Ottawa cannot walk away from an intergovernmental agreement. It would have been interesting if participants had discussed alternative ways of achieving this goal, for example through a constitutional amendment providing for formalized accords that neither party could unilaterally pull out of, or amend prejudicially to the interests of the other.

### **Economic Policy and the Legitimacy of Federal Power**

The session on economic policy was the one that had least to do with constitutional issues, but was also the one that demonstrated most clearly the changed - and still rapidly evolving - relationship between Quebec and the rest of Canada. The other sessions focussed on how to wrap up the old agenda of Quebec's relations with its Confederation partners; the session on economic policy pointed to the existence of a new agenda, even if its main features are still difficult to discern. It was evident to all that Quebecers' attitudes towards business, the thrust of Quebec's economic policies, and the structure of the provincial economy - its place in the Canadian and North American economies - have all been transformed in recent years; but the group assembled at Mont Gabriel had great difficulty in coming to grips with the institutional and constitutional implications of these developments. It was also apparent that, in addition to such implications, there are some policy issues giving rise to a potential legitimacy problem for the federal government, in view of the regional impact of its economic policies.

#### *The Quebec Economy and Economic Policies*

It was repeatedly said at Mont Gabriel that the Québécois of the 1980s have a new, positive attitude towards business. As one person put it, it's no longer the archbishop or even the deputy minister who is held up as a model to emulate, but the entrepreneur, especially the entrepreneur who has "made it" in external markets. But one participant viewed these changes from a different perspective:

I don't think Quebec is playing by new rules now, or that Quebec has changed gods. Rather, the Quebec francophones have renounced an economic structure containing two economies

having little relationship to each other. Around 1960, for example, there was a "Quebec economy" – the economy that occupied the whole territory of the province except the western part of Montreal – and there were the remnants of the economy of Montreal as the metropolis of Canada. The latter was an economy in decline, a structure that was very difficult for francophones to penetrate. Provincial policy had the effect of accelerating the decline of the Canadian economy in Montreal, and this had negative effects on the province as a whole; but it also permitted the province to reconstruct the rest of the Quebec economy, and to transform Montreal into the headquarters of a Quebec economy integrated with the rest of Canada, and not viable within Quebec alone. The effect of these changes has not been to recapture for Montreal the position it had in 1920 or even 1950, but to make it into a regional metropolis of considerable importance. I wouldn't say that now, for the first time, the Quebec francophones have discovered that they have to be competitive; previously, they had no opportunity to enter the competition; now they do.

In other words, behavioural changes match structural ones, and adapt to the opportunities at hand. But policy helps too. This was recognized by participants who shared a common interpretation of the economic role of the Quebec government today. The most thorough treatment of this subject was by Thomas J. Courchene, who stated:

The Parti Québécois became, after the referendum, the most business-oriented or market-oriented government in Canada. The designation is not fully appropriate, since the state is also playing an important role. Perhaps incentive-oriented, entrepreneurial, or peoples' capitalism more accurately reflects what is going on. Moreover, this new political economy is decidedly nationalist in nature, since it represents an integrated strategy for economic development and for the control of economic institutions by Québécois and from a location within Quebec, namely Montreal....It is probably safe to assume that the Liberal government will continue with the new political economy and perhaps even advance it in measurable ways.

Not everyone was willing to describe the policy as "nationalist", because nationalism (one person suggested) implies giving privileges to people on the basis of ethnicity. This person did not consider that linguistic bias was a feature of Quebec's economic policy. Others, however, described the policy as nationalist for precisely this reason. Indeed, the role of the

provincial government in promoting the "francisation" of Quebec business – for example through the language law – was generally recognized by the group.

The idea that nationalism was a feature of Quebec's economic policy came up also in a different context, where there was obvious disagreement among participants. Courchene described the thrust of policy as "market nationalism", its goals being "to build a strong and viable economic base, ... to open up the economy, and at the same time to use the instruments of the state (subsidized share-ownership [through the Quebec Stock Savings Plan or QSSP] and the Caisse [de Dépôt]) to complement and enhance this process." The "nationalism" here related to territory rather than ethnicity or language. But, Courchene added, it is not province-building in the usual sense of the term, because it is not directed against anyone else in Canada: "They are building a strong base not in order to be able to get a BC market from Ontario; they are looking vertically or outward to the US instead of horizontally. This will only hurt Ontario if Ontario continues to look inward. Ontario should follow Quebec's lead." On the other hand, Courchene acknowledged, "The QSSP is a clear barrier to the national flow of capital because Quebecers do not get [a tax] credit for investing in new issues of firms outside the province. Other provinces cannot put it in because they don't have their own personal income tax. This is a discriminatory move, inconsistent with an internal common market. I don't know what to do about that – one thing to do is to nationalize it, let Ottawa do it for everybody."

### *Institutional and Constitutional Implications*

Even though there were differences of nuance and emphasis, the group at Mont Gabriel shared basically the same interpretation of changes in the structure of the Quebec economy, changes in attitudes, and changes in policy. Participants experienced difficulty, however, in identifying what all these changes may signify or portend for Quebec's relationship with its Confederation partners. Discussion in this area touched upon common market issues; the extent of economic powers required by Quebec to reinforce Quebec's character as a distinct society, or to support cultural development; the flexibility of present constitutional arrangements; and the idea of creating a national securities market.

A Quebec businessman squarely addressed the common market issue. Noting the tendency of Quebec entrepreneurs to look outward, he added:

The absence of an integrated Canadian market and the existence of too many non-tariff barriers among the provinces are the most serious economic problem we have in Canada. Our constitutional



experts should concentrate on this. The free trade debate has underlined once again this fundamental problem. The Quebec economy, five or six million persons, is too small to have allowed our firms to take the fundamental decisions they needed to take over the past few years to become competitive. They have to take radical decisions, to specialize, to merge with other firms, or to buy them out. The Canadian market is too balkanized to permit rationalization. Our industries must be able to count on having access to a bigger [domestic] market, in order to become more efficient, bigger, and less numerous – as we must do to be competitive not only in the United States, but also in Asia and Europe.

Some participants considered that all this was overblown, that the costs of internal non-tariff barriers (NTBs) have been exaggerated in the past. Another response was that eliminating all internal NTBs would not significantly increase east-west trade, unless Canadian industry has poor access to the American market. While there was general support for trade liberalization, opinion at Mont Gabriel appeared divided between two approaches: (1) to concentrate first on ensuring effective integration of the Canadian market, in order to rationalize and become internationally competitive, or (2) to open up internationally and let the domestic problem solve itself (which it would do, because domestic producers faced with foreign competition would not tolerate the retention of internal barriers).

On the subject of Quebec's economic powers, one participant expressed the following opinion:

What Quebec needs, as far as its economy is concerned, is enough constitutional room for manoeuvre to permit it to determine how it will adapt to shifts in the international economy and also to the strategic choices made by the federal government for the Canadian economy as a whole. The size, the resource endowments, and the industrial structure of the provincial economies vary considerably. Each province therefore has an economic situation peculiar to itself; and each must have, correspondingly, a certain capacity to adapt to external forces. But the linguistic and socio-cultural distinctiveness of Quebec often imposes upon it sharper, or greater, adaptations than are required elsewhere. The history of the past quarter century demonstrates that Quebec's room for manoeuvre is considerable, but is it sufficient?

Those who argue that on the whole Canada is already decentralized enough, often are of the view that it is decentralized

in the wrong way. In economic affairs, evaluations are often made applying a single criterion, that of efficiency....I think a different form of evaluation, using the cultural security of Quebec as a guide, might be useful.

This person did not identify, however, the changes in the distribution of economic powers that might come about if the criterion of cultural security were applied. Indeed, no one argued that Quebec now lacks essential powers in the economic field. Quite the opposite was said by at least one person, and his assertion was not challenged.

If there was consensus at Mont Gabriel on the division of powers in the economic field (given the small number of people who addressed the issue, a judgment on this matter is difficult to make) it would probably be that the constitution as it stands now is flexible enough to accommodate fundamental changes in economic conditions as well as in the economic aspirations or strategies of the various provinces. Here Quebec is no exception. It was recognized that Quebec has certain powers in "non-economic" fields, for example regarding language and social affairs, that have a distinct economic relevance. One person suggested if one were looking for an "omnium gatherum" or unifying principle lying behind Quebec's policy initiatives across a wide range of areas, including in economic affairs it would be to promote the interests of *le Québécois majoritaire*, the francophone Quebecer who need never choose between his career and his culture. Some of the participants seemed uncertain whether, to serve this purpose, Quebec needed more control (or absolute possession) of policy instruments now lodged in Ottawa, or shared with it; but no one made the case that it did.

Indeed, one of the surprising things about the session on economic affairs, or about the conference as a whole, is that there was scarcely any reference to specific instruments of economic policy, or to which order of government should wield them, or to whether Quebec has needs that – because of its culturally and socially unique situation – are either more extensive than those of other provinces, or different from them. The one area that was referred to by several speakers was securities regulation and the idea of a national securities market. Courchene asserted that regulatory powers in this area are provincial, but that this in no way prevented the creation of a Canada-wide market. Three others also referred to the matter, one suggesting that while the provinces now are the active order of government in the field, Ottawa has adequate constitutional authority to impose rules or controls of its own (in which case federal law would prevail if there were any conflict with provincial law). He saw advantages in this, without specifying what they might be; the other two also seemed sympathetic. One imagines that if ever there

were new federal initiatives in this area, it could easily become a federal-provincial battleground.

### *Legitimacy Issues*

Some of the discussion on economic policy had less to do with the activities of the Quebec government than with those of the federal government. Both, obviously, are relevant to redefining Quebec's place in Canada, or to building a new relationship between Quebec and its Confederation partners. The problem: do Ottawa's policy decisions risk undermining the legitimacy of federal power?

The issue was placed before the conference by a participant who observed that francophone businessmen who are trying to break into export markets tend to avail themselves of the provincial government's help and advice, not Ottawa's. In many instances the federal Department of External Affairs ought to be better placed to help, but Quebec businessmen prefer to deal with Quebec agencies such as the *Société de développement industriel*. This person did not allege that federal policies, or the attitudes and behaviour of federal officials, are inadequate or unhelpful; he simply made the observation that this is what francophone businessmen do, and said that the matter ought to be of concern to the federal government.

The question of legitimacy also came up in the context of federal policies having regionally discriminatory effect. One participant, noting that Courchene painted a picture of strong social consensus in Quebec for entrepreneurial, market-oriented, competition-enhancing policies, added: "Those who live at the other end of the country sometimes see an equally strong consensus for decisions such as Petromont, Domtar, the Western Grain Transportation Act, and dairy quotas. How do you fit that into your model?" There ensued the discussion about "province-building", referred to above; thus attention was shifted again to provincial policy; but several people were evidently deeply concerned about the actions of the federal government over the years, and about what a federal government, of any party, can do to strengthen its own legitimacy. One said:

In the last election, in the west there was a feeling that at last we're getting rid of Trudeau and his preoccupation with Quebec. We'd had enough of the Quebec issue. Now Mulroney too seems mesmerized by the problem of Quebec. That would be OK if the economy of the West were in good shape, but it's not, it's in collapse. Oil and gas prices, agricultural prices, and mineral prices are in trouble and will remain so. This causes emotional and fiscal

strain on Confederation. If Ottawa remains transfixed with the problems of Quebec, then obtaining reconciliation with the West will be difficult.

Similar thoughts were expressed by others, one of whom emphasized that all regions must have an economic stake in being part of the federation. This applies equally to Quebec and to the other provinces or regions. Quebec, which is determined to strengthen its export performance both in the United States and around the world, must have confidence that membership in the federation will support these endeavours or aspirations, and federal policy must justify such confidence. Similarly, provinces that depend heavily on resource production must perceive an economic benefit to their resource industries; too often, in the past, the net effect has been negative. This presents a challenge to federal policy makers; continued failure to meet the challenge would erode the legitimacy of federal power. The conclusion was that rebuilding the relationship between Quebec and its Confederation partners involves more than finding appropriate responses to linguistic and cultural duality; it involves also restructuring relations among economic regions.

There is also another dimension to the legitimacy problem, although in this case the problem is not Ottawa's alone but equally that of the provincial governments. That dimension is income distribution and the economic security of the worker. Only one person referred to these matters. Amid the many references that others were making to the new horizons and go-getting behaviour of Quebec's francophone businessmen, he said:

My reaction to the discussion is that this Alice-in-Wonderland approach can only be found among economists. When we're facing the worst crisis that I've lived through, they're convincing us that we are living in the best of all possible worlds. I'll take the message back to [the working-class neighbourhood] where I live. My whole reaction is, you are celebrating the insecurity of the working class because of so-called gains in entrepreneurship whose results are not reaching [my neighbourhood] and never will.

These remarks earned no applause. A couple of people responded by saying that the working class needs a competitive economy to maintain and improve its standard of living. However, this participant touched on a problem of wealth distribution that none of the others addressed. Ultimately, the political problems and dilemmas involved in rebuilding a satisfactory relationship between Quebec and its Confederation partners spill over into other areas: how to reorder relations among economic

regions and among economic classes. Distributional justice – among regions and income groups – is important. A government that subordinates goals having top priority for large segments of the population cannot convince the public that another set of issues must be given top spot on the public agenda. At Mont Gabriel this was recognized when people were talking about relations among the regions. However, except in the one brief intervention cited above, participants paid no attention to class divisions in the session on economic policy and its political and constitutional significance.

### **The Constitution: Genie in the Bottle?**

The Mont Gabriel group recognized that one of the greatest barriers to reaching a constitutional settlement with Quebec was that other issues have priority for most Canadians, and that governments cannot be seen to be “wasting” their time and energies on second-order problems when the economy is in disarray. This consideration, plus the lack of certainty that the process, once initiated, could be brought to a successful conclusion, led the group to consider carefully whether the time is right for a new constitutional initiative. It was generally acknowledged that a failed attempt would have serious consequences.

Extended discussion produced apparent consensus – in the sense that any disagreement was not publicly voiced – on a number of propositions, which may be summarized as follows.

- The present situation, where certain features of the Constitution Act, 1982, are unacceptable to Quebec, must not be allowed to persist. There is bound eventually to be a resurgence of Quebec nationalism, and it would be courting disaster not to reach a constitutional accord in the interval. The constitutional issue must not be left to fester until there is some new crisis, at which time a settlement may well be unachievable.
- The challenge for the rest of Canada is to take the issue seriously enough to resolve it now, when the federation is not in crisis. If we are to “close the chapter” on the events of 1980-82, without waiting for a crisis to force the issue again upon the public mind, the time is now uniquely favourable. But to put the issue on the public agenda will require a personal, public, and vigorous commitment by the Prime Minister. No one else can do it.
- Mr. Rémillard’s list of five items is a remarkably modest one, and represents a bare minimum for Quebec. In his keynote address, Mr.

Rémillard had pointed out that the 1982 Act, which is binding on Quebec as on the rest of Canada, has several valuable features, notably the Charter of Rights and Freedoms. However, he had gone on to say that from Quebec's point of view, the Act also has a number of deficiencies that must be remedied before Quebec can endorse it. (1) Quebec's character as a distinct society must be explicitly recognized. (2) Quebec needs extended powers in relation to immigration. (3) The spending power of the federal government must be limited. (4) The formula for amending the constitution needs to be changed, giving Quebec, directly or indirectly, a veto. (5) Quebec must participate in the nomination of Supreme Court judges, one third of whom are (as is required by the Supreme Court Act) drawn from the Quebec bar). The group considered that Mr. Rémillard had made every effort to pare the list to the essentials, partly (one may suppose) because the Quebec government cannot be seen to backtrack in the negotiations; this would destroy its own legitimacy in the province. Implication: at the conclusion of negotiations, the Quebec government must be able to point to a satisfactory resolution of every one of the five issues. The other governments must not approach the discussions with the idea that agreement on three or four items would be enough to get Quebec to sign. In the unlikely event that Quebec were to do so, the accord would be repudiated by the electorate.

- The constitution is a genie in a corked bottle. Before uncorking it, one must be sure the genie will not grow to unpredictable proportions, or become unmanageable. One dare not expand Mr. Rémillard's list of five items. Other parties must be persuaded not to look upon the reopening of the constitutional dossier as an opportunity to air their own grievances or to win approval for whatever amendments they themselves would like to see adopted. If this happens, the agenda will expand uncontrollably, and it will be impossible to negotiate an agreement. All governments must accept - as subsequently they did at Edmonton, during the August meeting of the premiers - that the items put on the agenda by Quebec will have priority. The justification for this is that the constitutional accord of November 1981 was not acceptable to Quebec, and its moral exclusion from the constitution cannot be allowed to continue.
- Important as it is to reach a new accord, it would be a mistake to start formal negotiations unless there is a strong likelihood of succeeding. Great damage would be done, in terms of Quebec public opinion, if talks began and then failed. Thus a preliminary set of

informal discussions must take place behind closed doors, and the outcome of these discussions should determine whether prospects for agreement are good enough to move the talks into a public phase. Ultimately there *will be* a public phase, because the 1982 Constitution Act requires that all amendments secure parliamentary and legislative approval; in the case of changes to the amending formula itself, favourable resolutions must be passed by Parliament and all ten provincial legislatures.

### **“Distinct Society”, Immigration, and Supreme Court**

Of Mr. Rémillard's list of five items, participants scarcely made reference to three: recognition of Quebec as a distinct society, extended powers for Quebec in the field of immigration, and appointments to the Supreme Court.

The final session of the conference focussed specifically on the desirability of entering into formal constitutional negotiations, and on the probable substance of such talks. Broadly, people were trying to identify possible snags and how the snags might be minimized or avoided. Thus what was *not* said was very revealing. “How to proceed”, and the related matter of preventing the expansion of the agenda, received by far the most attention. Regarding matters of substance, attention focussed on the spending power (discussed above) on Section 23 of the Constitution Act 1982 (minority language education), also discussed above, and on the amending formula. May one assume that the group broadly endorsed the remaining items mentioned by Mr. Rémillard, or thought that, on these items at least, consensus could be relatively easily reached across the country? Whatever the correct interpretation, here we are justified merely in reporting that (1) only one person picked up on the idea of recognizing Quebec as a distinct society, suggesting that a preamble to the constitution – the 1867 Act, the 1982 Act, or a new (1987?) Constitution Act – could reasonably include such recognition; (2) only one person referred to expanded powers over immigration, and apparently he did so only to express surprise that no other division of powers items (like communications, for example) were referred to by Mr. Rémillard; and (3) one person singled out the composition of the Supreme Court as being potentially a major stumbling block, in that other provinces too might claim “representation”.

A note on “Quebec, the Mont Gabriel Conference and the Supreme Court of Canada”, by William R. Lederman, is included in this volume as Appendix C.

## Amending Formula

Resurrecting a constitutional veto for Quebec was recognized to be a potentially explosive issue. Several participants said bluntly it could not be achieved. However, in saying so they appeared to be thinking of a formula that would identify Quebec as having a role, or a degree of authority, denied to any other province, or limited to Quebec and Ontario. A number of people – perhaps half a dozen – spoke of trying to find a formula that would meet the objectives and legitimate concerns expressed by Mr. Rémillard, without singling out Quebec for special treatment. One, for example, thought that it would be useful to restructure national institutions – specifically, or mainly, the Senate – such that certain measures could be adopted only by a concurrent (or double) majority of anglophone and francophone members. Quebec would recognize that most francophone members would be from that province, giving it an effective if indirect veto power. This proposal, however, drew some criticism and no supporters.

The amending formula proposals that captured the greatest degree of attention and support were: (1) to provide for fiscal compensation in the case of amendments to the division of powers, if Quebec (or any other province) opted out; and (2) to increase, but in a minimal way, the range of amendments requiring unanimity, i.e. a resolution passed by Parliament and all the provincial legislatures. The two suggestions are complementary, making in effect a single proposal.

Unanimity is already required under Section 41 of the 1982 Act for amendments relating to a short list of matters that include the use of the English or the French language (with minor exceptions), the composition of the Supreme Court of Canada, and the amending formula itself. The general formula is that an amendment may be made by resolution of Parliament and two-thirds (i.e., seven) of the provincial legislatures representing at least one half of the population of Canada. However, a province may opt out of an amendment relating to the division of powers. Obviously, the opt-out provision cannot be invoked in the case of the following matters, to which the general formula (Section 42) applies:

- the principle of proportionate representation (by province) in the House of Commons,
- the Senate (most aspects),
- the Supreme Court of Canada, except as regards its composition, and



- extending provincial boundaries into the territories, or the establishment of new provinces.

In effect, the idea that received attention at Mont Gabriel was, first, to identify those parts of the above list of items that Quebec would have reason to be concerned about since, as repeatedly stated by Mr. Rémillard, "one does not withdraw from an institution." A second step would be to include such items – phrased as narrowly as possible – in the unanimity list (Section 41). In such matters Quebec would have a veto, but so would all the other provinces. Thus Quebec would not be singled out for "favours" and all provinces would be on an equal footing in relation to constitutional amendments, except in the percentage of the population they contained. Population, of course, is relevant to the "50 per cent of the population" rule in the general amending formula:

No one referred to the idea later embodied in a proposal made by Mr. Bourassa at the Premiers' conference in Edmonton (August 1986), that the general amending formula be changed to require the assent of two-thirds of the provinces representing at least three-quarters of the population. (Mr. Bourassa suggested 75 per cent, giving Quebec – with 26 per cent – an across-the-board veto.) The group at Mont Gabriel focussed instead on a less radical change that still appeared to meet the objectives or concerns set out by Mr. Rémillard.

## 4 FINAL OBSERVATIONS

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The group assembled at Mont Gabriel was not representative of the Canadian population as a whole. However, it probably was a good cross-section of Canadians having an interest in constitutional affairs. Many of those who have since been playing an active role in informal talks towards achieving a new constitutional accord or "bringing Quebec into the constitution" were present. Thus the conference deliberations were probably a good sample of preliminary thoughts on several issues that will have to be addressed and resolved in the process of rebuilding the relationship between Quebec and its Confederation partners.

What "kept the juices going" at the conference was the strong and widely-shared conviction that national reconciliation is a national imperative. Quebec, it was recognized, had valid reasons for refusing to give its consent or support to the Constitution Act, 1982. While many non-Quebecers evidently object to reopening questions that they consider to have been settled in 1982, and in Quebec some people believe the best thing to do about the constitution is to forget about it – that is, to wager that memories of 1980-82 will fade away, so long as they are not artificially kept fresh – the conference participants insisted otherwise. They were strongly of the opinion that although Quebecers have grown tired of politics for now, and constitutional issues seem remote and outdated to the youth of Quebec, a new wave of Quebec nationalism is bound to occur sooner or later. This, they believed, makes it essential to resolve outstanding constitutional differences before a new crisis arrives.

Mr. Rémillard's keynote speech was a constant point of reference during the discussions. Participants repeatedly affirmed that the five conditions he set out for reaching a new constitutional accord made agreement "manageable", as long as the agenda was limited to these five items.

A new accord would conclude unfinished business from 1980-82. However, it would not resolve once and for all the "problem" of Quebec's relationship with its Confederation partners. Rather, it would

provide a framework, acceptable to Quebecers, within which new issues – ones that are of considerable importance not only to Quebecers but to people in all parts of Canada – can be effectively tackled. Many of those issues are economic, involving relations among Canadian regions and between Canada and the rest of the world. The group assembled at Mont Gabriel was convinced that Canadians must wrap up the old agenda that in order to release themselves to deal with other problems, or to turn to other matters, for which most of them will have far greater zest.

## APPENDIX A

### ADDRESS BY MR. GIL RÉMILLARD

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*Unofficial English-language text. The translation, which is the responsibility of the editor, is based on the French-language text, as distributed at the conference. It takes account of additions and modifications made by Mr. Rémillard at time of delivery.*

Nothing less than Quebec's dignity is at stake in future constitutional discussions.

*(Mastering the Future, p. 49)*

To begin with I would like to thank the Institute of Intergovernmental Relations and the École nationale d'administration publique for having invited me to this seminar and for having given me the opportunity to participate in your work. It is certainly promising to see the Institute of Intergovernmental Relations of Queen's University at Kingston and the École nationale d'administration publique of Quebec associate to organize such a seminar. This association is entirely to the credit of these two teaching and research establishments and I congratulate their respective directors, Mr. Peter Leslie and Mr. Jocelyn Jacques.

The theme of the seminar "Rebuilding the Relationship: Quebec and its Confederation Partners" could not be more apt. As constitutional talks resume between Quebec, Ottawa and the other provinces, this type of forum can prove very useful. Therefore, I am pleased as minister responsible for constitutional matters to share with you the overall orientation the Quebec government intends to promote in its talks with its partners in the Canadian federation.

17 April 1982 is a historic date for Canada. It was on this day that Elizabeth II, Queen of Canada, proclaimed the Constitution Act of 1982 on Parliament Hill in Ottawa. Thus, after more than 55 years of difficult discussions which, on some occasions, even plunged Canadian federalism into profound crisis, nine provinces and the federal government agreed not only to repatriate the Constitution, but also to substantially modify the original Constitution of 1867. This accord included a Charter of

Rights and Freedoms, an amending formula, aboriginal peoples' rights, an equalization clause, and modification of the distribution of powers in matters concerning natural resources.

Little remains to be said on the fact that the Constitution Act of 1982 marked the disappearance of the last vestige of Canada's colonial status. Since the Statute of Westminster of 1931, Canada has been a sovereign country. Although the Parliament at Westminster continued to hold formal rights in constitutional matters, it never acted except at the express request of the Canadian government. Many Canadians would probably be surprised to learn that even today London could declare Canada a "colony of the British Empire". All it would have to do would be to modify the Statute of Westminster of 1931 and the Constitution Act of 1982, although as Lord Denning said in his famous obiter dictum in the Blackburn case, "Legal theory does not always coincide with political reality."

Nothing obliged the Canadian government to institute proceedings through the Parliament of Westminster to regain full sovereignty with complete international rights. Canada could just as easily have proclaimed, as a sovereign state and on its own territory, this important new part of its constitution. However, Canada opted, for one last time, to have recourse to the old colonial mechanism. By proceeding in this way it was easier for the Canadian Parliament to act without obtaining the assent of the provinces. In fact, the Supreme Court had ruled on 28 September 1981 that on the strictly legal level, nothing stopped it from changing as it wished the Canadian constitution. However, there were some restrictions with respect to the legitimacy of such an action. The Court found that according to convention Ottawa should only proceed if it had the consent of a sufficient number of provinces. Yet in referring the matter to Westminster, Ottawa could, if need be, go against what the provinces wanted. This procedure allowed it to proceed directly, without getting Quebec's consent. In the aftermath of the Constitutional proclamation of 1982, Quebec found itself isolated from major amendments to the Constitution which, in certain respects, contravened Quebec's historic rights. Four years after the proclamation of the Constitution Act of 1982, Quebec, headed by a new government, still has not adhered to the Act. No Quebec government, regardless of its political tendencies, could adhere to the Constitution Act of 1982 in its present form. However, if certain modifications were made, the Act could become acceptable to Quebec.

Therefore, the Quebec government wishes to resume constitutional discussions with its federal partners, Ottawa and the other provinces. However, essential conditions have not been satisfied for beginning serious formal constitutional negotiations. Certain points must be

clarified first. Ottawa must indicate what, in its words, might be meant by signing a constitutional agreement "with honor and enthusiasm" as the Prime Minister of Canada, Mr. Mulroney, has said he hopes to do.

It should be stressed that it is not only up to Quebec to act. Our federal partners must also be active players. We expect concrete action on their part, action that is likely to steer the talks in the right direction. The ball is not only in Quebec's court but also in that of the federation, on Ottawa's side, on the side of the other provinces, the nine other provinces that isolated Quebec. We want to negotiate, but we want to negotiate with partners who first indicate to us concretely their desire to rectify the injustice that the Constitution Act of 1982 represents for Quebec.

This is not the time for listing the errors committed by one side or the other. On the contrary, it is a time for cooperation and understanding. Quebec will approach these constitutional talks firmly and with determination but also with an open mind, as required by the higher interests of Quebec and Canada. However, you will agree with me that Quebec's isolation cannot continue much longer without jeopardizing the very foundation of true federalism.

Nor is it a time for sweeping all away with the back of the hand and starting all over again. Absolutely not. Not everything contained in the Constitution Act of 1982 is bad. The Charter of Rights and Freedoms, after court interpretation, is on the whole a document of which we as Quebecers and Canadians can be proud. Its greatest merit no doubt lies in gradually giving us, as Canadians and Quebecers, a new mentality and approach with respect to fundamental rights. This is why our first decision as the new government last December was to stop systematically applying, as the former government had done, the "Notwithstanding" clause to all Quebec statutes, to exempt Quebec laws from sections 2 and 7 to 15 of the Canadian Charter. We want Quebecers to have the same rights as other Canadians.

The only valid reason that could justify the systematic utilization of this derogation clause could be as a symbol, a symbol of the disagreement of Quebec confronted with the Constitution Act of 1982. But we feel that this symbol is empty. We refuse, as a government, to take Quebecers hostage in our constitutional talks with the rest of the Canadian federation. There is absolutely no question of depriving our people of such fundamental constitutional rights as the right to life, to security of the person, to a just and fair trial, and to equal treatment under the law. These are rights intrinsic to human nature and to life in society. Hence, our first decision was to use the "Notwithstanding" clause only where necessary to protect the public interest of Quebec.

If the Canadian Charter poses few problems for Quebec, the same is not true for other aspects of the Constitution Act of 1982 which, in many respects, negates Quebec's historic rights.

On 2 December 1985, the population of Quebec clearly gave us a mandate to carry out our electoral program, which sets out the main conditions that could lead Quebec to adhere to the Constitution Act of 1982.

These conditions are:

1. Explicit recognition of Quebec as a distinct society;
2. Guarantee of increased powers in matters of immigration;
3. Limitation of the federal spending power;
4. Recognition of a right of veto;
5. Quebec's participation in appointing judges to the Supreme Court of Canada.

### **Quebec as a Distinct Society**

As far as we are concerned, recognition of Quebec's specificity is a prerequisite to any talks capable of leading Quebec to adhere to the Constitution Act of 1982. Quebec's identity is the culmination of a slow social and political evolution. At the time of the Conquest of 1760, a unique francophone community existed with its own customs, mentality, and lifestyle, and with its own civil, religious and military institutions. These people were the true Canadians whereas the conquerors were Englishmen. The Quebec Act of 1774 and the Constitution Act of 1791, which created Lower and Upper Canada, confirmed the Canadians' unique character by giving them their first legal basis of existence and expression permitting them to conserve their civil law and their religion while also establishing a parliamentary system. Then came the Act of Union of 1840, which followed the Durham Report drafted after the Rebellions of 1837-1838. This Act united Upper and Lower Canada into a single political entity. Thus appeared for the first time, in 1840, the two designations, "French Canadians" and "English Canadians", that the British North America Act, 1867, consecrated in letter and in spirit.

It was necessary to wait more than a century before a veritable national Quebec character emerged from this French Canadian people. During one hundred years of federation, Quebecers would increasingly become aware of their identity in terms of their provincial government and in terms of a common good, a desire to live together and to share the same elements of existence, making them a specific society.

This identity must not in any way be jeopardized. We must therefore be assured that the Canadian Constitution will explicitly recognize the

unique character of Quebec society and guarantee us the means necessary to ensure its full development within the framework of Canadian federalism.

### **Immigration**

Recognition of the specific nature of Quebec gives rise to the need for obtaining real guarantees for our cultural security. Cultural security translates into giving Quebec sole power to plan its immigration. In this way it can maintain its francophone character by countering or even reversing demographic trends that foreshadow a decrease in Quebec's relative size within Canada.

### **Spending Power**

Cultural security also signifies Quebec's ability to act alone in its fields of jurisdiction without interference from the federal government through its spending power. You are no doubt aware that this power allows Ottawa to spend sums of money in any area it wishes whether it falls under federal jurisdiction or not. At present, there is no exclusively provincial area of jurisdiction that is not susceptible in either a direct or indirect way to being affected by the federal spending power. The spending power has become a "sword of Damocles" hanging menacingly over any province wanting to plan its social, cultural or economic development. This situation has become intolerable. Bill C-96 dealing with the financing of health and post-secondary education, which is before the Canadian Parliament, is an eloquent example of this situation. This bill is clearly unjust and discriminatory as far as Quebec is concerned. It represents a shortfall in transfers totalling \$82 million in 1986-87. We would be very happy if the federal government removed itself from these areas of responsibility - education, manpower, health. However, we consider it unacceptable that it should do so without granting financial compensation to provinces for the discharge of these responsibilities. Placing boundaries on the application of the spending power could be a major contribution to the amelioration of the Canadian federation. Should Bill C-96 be passed by the Canadian Parliament, the result would certainly have a serious impact on the progress of constitutional talks.

The spending power, when related to the principle of equalization, is much more acceptable. However, once again, the current situation is completely unfair to Quebec. My colleague, the Minister of Finance, Mr. Gérard D. Lévesque, had reason to denounce Ottawa's attitude in his recent budget. Ottawa unilaterally changed the rules for applying the



principle of equalization which is entrenched in Section 36 of the Constitution Act of 1982. It is unacceptable for Ottawa to have acted unilaterally to change the rules of the game. The main parameters for applying the principle of equalization, as stated in Section 36 of the Constitution Act of 1982, must be written into the constitution. The application of this principle is a basic feature of our federal system; the very philosophy of our federal system, the distribution of the nation's wealth among the provinces, rests on equalization. This principle is the foundation of the country. Thus, to change it, to change the parameters governing its application, it should be necessary to employ the same formula as applies in the case of constitutional amendment. In this way the provinces would be protected from any unilateral federal action. And that is an additional reason we have to insist upon an amending formula that will respect the historic rights of Quebec within the federation, as they have existed since its creation in 1867.

### **Amending Formula**

The present amending formula is unacceptable to Quebec because Quebec foresees the possibility of a province withdrawing from an amendment that does not suit it, and infringes on its rights, powers and property, without receiving financial compensation except in cases relating to education and culture. In all other cases, the withdrawal of a province implies no financial compensation. This means that for all practical purposes a province that takes advantage of the right guaranteed in the constitution to withdraw from amendments that abrogate its rights, and that it does not desire, will see its citizens subjected to double taxation. This is what happens when a province avails itself of the present amending formula. This is an unacceptable situation!

Secondly, although one can easily conceive of withdrawal from a field of jurisdiction, it is impossible to withdraw from an institution. This also makes the amending formula unacceptable to Quebec. One cannot withdraw from the Supreme Court. One cannot withdraw from the House of Commons. This points to a serious gap in the formula, a gap that is directly in conflict with the historic rights of Quebec because the amending formula as it now stands permits seven provinces totalling 50 per cent of the population and the Canadian Parliament to modify the Senate, certain aspects of the Supreme Court, and the base of our representation to the House of Commons, despite Quebec's objections. This is unacceptable!

While this amending formula is based on the principle of withdrawal, its drafters unfortunately did not understand that one does not withdraw from an institution. We have to repair this situation as rapidly as possible.

The only way to do this is through the right to absolute or qualified veto, a right of veto which would permit Quebec to say "non" to amendments that infringe upon its historic rights in this federation. It is a security we must have and it is a major point we want to negotiate.

### **Supreme Court**

In addition, we would also like to state precisely the role of one of the most important institutions in our federation. The Constitution is not always changed formally using the amending formula. The highest court in the land, the Supreme Court, can modify the constitution through judicial interpretation. Therefore, we would like assurances that Quebec will be a full participant in the process of selecting or nominating Supreme Court judges.

Furthermore, we would like assurances that the Supreme Court has now been constitutionalized, and is now part of the Constitution of Canada. It is a point of great importance because, as you know, it was in 1875 that Parliament decided by law to create this Supreme Court as a court of last resort in Canada. The question that arises is whether, since articles 41 and 42 of the Constitution Act of 1982 refer to the Supreme Court - to its composition, and to other features - the Court itself now has constitutional status. This is important for us as Quebecers, because if the answer is yes, that means that we have at least a guarantee that a third of the Supreme court judges, at present three out of nine, will be chosen from the Quebec Bar or Magistrature. However, if the answer is no, this means that we have no such guarantee. Parliament would have full control over its law on the Supreme Court because we know that in jurisprudence, a law is always amendable, that is, modifiable by another law. Therefore, this is a particularly important point for Quebec.

### **Overall Aims of Quebec, and Minority Language Guarantees**

Quebec has three main objectives in opening constitutional negotiations. We want to make the Constitution Act of 1982 acceptable to Quebec, but we also want to improve it for the whole Canadian federation. For example, if we succeed in clarifying the constitutional status of the Supreme Court we shall have added precision on a matter of great importance to Quebec, but in doing so we also clarify the matter for the whole federation. The question is an important one for all the other provinces too. Thus, in the constitutional negotiations we want to improve, for the whole federation, this second historic compromise on the structure of the Canadian federation.

We also want to improve the situation of the francophones living outside the province of Quebec. This last point is especially important to us. In fact, the situation of francophones outside of Quebec will be one of our major preoccupations during the upcoming constitutional talks. Their situation could be greatly ameliorated. It would be advantageous to clarify certain ambiguous points in Section 23 of the Constitution Act of 1982, and in particular the famous expression "minority language educational facilities" found in paragraph 3(b) of Section 23. We know that members of the minority have the right to be educated in their own language, and in certain cases, in institutions that they themselves own. However, it has not been stated whether they have the right to administer these institutions. The Ontario Court of Appeal has already ruled that they do have this right, and that the power to administer the institution is comprehended in the expression of "minority language educational facilities". This is a very important element in the application of Section 23. It's one thing to be able to take courses in one's own language in a school of the majority language group; it's altogether another thing to be able to take courses in one's own language in a school that is administered in that language – and therefore to speak French not only in the classroom but also in the library, in the cafeteria, and in the schoolyard. The rights of the non-Quebec francophones would be improved considerably if it were specified in Section 23 that the expression "minority language educational facilities" signifies the right to administer these institutions.

One could also ask about the wisdom of retaining the expression "where numbers warrant" in conveying the right to minority language instruction. As the saying goes, "How many sheep does it take to form a flock?" Now, after four years of application, one must pose the following question: "Does it really make sense to include in the Constitution the concept of 'where numbers warrant'?" It is a question we must ask, in view of the problems of francophones outside Quebec.

Furthermore, these improvements to Section 23 could only benefit Quebec's anglophone community. Clearly, the problems encountered by francophones outside Quebec are not identical to those of Quebec's anglophones. However, we wish to ensure Quebec anglophones of their language rights. These rights must naturally be seen within the context of the francophone character of Quebec society and the Government's firm desire to ensure its full development.

## **Conclusion**

Quebec's future is within Canada. This is the profound conviction of the immense majority of Quebecers just as it is the prime, fundamental

commitment of this government. We believe in Canadian federalism because, within the federal system, Quebec can be faithful to its history and its unique identity while enjoying favourable conditions for its full economic, social and cultural development.

Stating our full, complete belonging to Quebec and Canada means also that we state with the greatest possible emphasis, our keen regret and feeling of helplessness about what occurred at the time of the patriation of the constitution.

As Quebecers and as Canadians, we cannot accept the fact that important amendments to our country's constitution were made without us and, in some respects, contrary to Quebec's historic rights. This is why Quebec's new government and the population of Quebec, in the interests of Quebec and Canada, would like matters to be corrected. Mention has been made of signing "with honour". Certainly, this is what we want: we are asking for the respect of the dignity and pride of the people of Quebec and respect of the province's historic rights. "With enthusiasm" – this too is possible if Quebec is once again made the major partner in the Canadian federation that it had always been.

The election of a Liberal government in Quebec in December 1985 signifies a new era for federal-provincial and interprovincial relations. Faithful to our federalist commitment, we want to guarantee Quebec its rights as a distinct society and major partner in the Canadian federation.

Quebec nationalism is not dead, far from it. It is thriving more than ever but in a different form. It is no longer synonymous with isolationism or xenophobia but rather with excellence. More than ever, we Quebecers, we French Canadians, must recall our history and remember that we owe our survival to the dangers that aroused the sense of daring and excellence in our ancestors.

Our existence as a people and our belonging to the Canadian federation is a challenge to history. Faithful to our history and confident in our future, Quebec intends to devote its efforts to continuing to meet this challenge and, within Canada, to make Quebec a modern, just and dynamic society.

## APPENDIX B

### ADDRESS BY THE HONOURABLE BENOÎT BOUCHARD

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Ladies and Gentlemen,

First of all, I would like to congratulate the Institute of Intergovernmental Relations of Queen's University, *Le Devoir* and the École nationale d'administration publique du Québec for providing this excellent opportunity to meet and reflect on Quebec and the renewal of its bonds with the Canadian federation.

Although this conference is being held nearly two years after the election which brought our party to power in Ottawa, it takes up one of the major themes of the 1984 election campaign, and brings to mind my own basic reasons for becoming involved in federal politics.

#### The Sept-Îles Speech

You will recall Mr. Mulroney's speech in Sept-Îles on August 6, 1984. For my colleagues and me, it was like a political manifesto, and the orientations it set out touches on almost every point in the concerns being discussed here today.

To refresh your memory, I will quote several passages of the Prime Minister's keynote speech:

I know that in the province of Quebec, there are wounds to be healed, worries to be calmed, enthusiasms to be rekindled, and bonds of trust to be established.

The renewal I propose to the men and women of Quebec is not only of an economic nature - it must also lead to new approaches and new political attitudes.

To me, the Canadian federation is not a test of strength between different governments. Federal power is more than that

of a policeman whose nightstick happens to be bigger than those of the others.

There is room in Canada for all identities to be affirmed, for all aspirations to be respected and for all ideals to be pursued.

In keeping with these statements, Mr. Mulroney undertook to convince the Quebec National Assembly, when the time was ripe, "to give its consent to the new Canadian Constitution" with honour and enthusiasm. He also stated that his government would implement a federal-provincial policy designed "to harmonize the policies of the two levels of government, [and] to respect provincial jurisdiction".

### **A Specific Vision**

A lot of water has flowed under the bridge since August 1984, but I still agree wholeheartedly with the vision of Canadian federalism underlying the Sept-Îles speech.

I feel that Canada is essentially the product of a shared sense of community that was imbedded in the hearts of Canadians long before it became part of the Constitution. It is a compromise between the need for the cultural security of groups and individuals and the need for economic and political co-operation dictated by the scope of today's problems - a compromise requiring sustained commitment and constant renewal. Our country is a living reality, built by the daily actions of millions of men and women united by a common history, common values and goals, which politicians may try to express but to which only the people of this country can in fact give tangible form.

In this respect, Canada - and particularly Quebec - has proven during the past decade that it can resist the most cherished dreams of its political heroes. This should give us cause for humility and prudence at a conference such as this.

In politics, we work not so much with ideas and institutions, but with human beings; this involves appealing to a common ideal and respecting people's freedom and rate of development. Some things take time, and the patient work undertaken by the Mulroney government over the past two years to rekindle Canadians' sense of community must be seen in the light of this people-oriented kind of politics.

### **Report Card on National Reconciliation**

Since September 1984, we have systematically relied on co-operation between governments and social partners, rather than on unilateral action by Ottawa, to build a country that is stronger because it is more

respectful of provincial priorities and more deeply rooted in the spirit, hearts and everyday objectives of groups and individuals.

Under the banner of national reconciliation, we have increased the number of federal-provincial conferences and discussions, but above all we have sought to infuse them with a new spirit. We have attempted to supplant competitiveness and discord with co-operation and the search for complementarity. Despite certain changes in the political landscape of several provinces, and despite the emergence of such thorny problems as the drop in oil prices, government belt-tightening, and the planned negotiations on freer trade with the United States, the country has, on the whole, experienced a period of federal-provincial harmony the likes of which it has not seen in a long time.

Moreover, this harmony has been not passive but active: witness the development of a federal-provincial strategy to expand Canadian exports, the signing of economic development agreements with all the provinces (including Quebec, which had refused such an accord under the Trudeau government), the negotiation of new oil agreements with the West and Newfoundland, and the signing of the Regina Memorandum of Agreement to hold an Annual Conference of First Ministers to review the state of the federation and discuss its future.

I leave it to you specialists to assess this interim report card on our achievements in federal-provincial relations, as well as our attempts to form closer ties with the private sector by emphasizing privatization and federal downsizing, and by holding a national summit on Canada's economic recovery. For the first time in many years, Quebec unions and businessmen came to discuss problems they shared with their colleagues from other parts of the country. This alone, it seems to me, should bear noting by this conference's participants.

As a politician, I feel that our method of governing has reassured the majority of Canadians, tapped new energies and given provinces, groups and individuals a greater role in building a country that is more prosperous, but also more harmonious, equitable and caring.

Moreover, our government intends to build upon this positive evolution of Canadian society, in order to bring constitutional negotiations with Quebec to a successful conclusion. As Secretary of State, I intend to use these improved relations as the basis for a reaffirmation of our official languages policy. This policy is not only the touchstone of our relations with Francophone and Anglophone Canadians, but also the *sine qua non* for real and full participation by Quebec in the life and institutions of our country.

## A Constitution That Reflects Our New Sense of Community

While I have no desire to upstage the Prime Minister, I would nevertheless like to say a few words about constitutional matters before addressing the reform of our official languages policy, a matter more closely related to my responsibilities as Secretary of State.

You will probably conclude from what I have said so far that strengthening the sense of community amongst Canadians has been and continues to be the *sine qua non* of all efforts to revise the Constitution. Despite its merits, however, it is true that the *Constitution Act, 1982* is not consistent with the recent changes in thinking in both Quebec and the rest of Canada. Nothing would help strengthen the relationship between Quebec and its partners in the federation more than successful constitutional talks which would enable the National Assembly to adhere proudly to our new Constitution.

Notice that I said successful talks. The two great dangers here are, on the one hand, impatience and, on the other hand, premature statements that may render negotiations more difficult and distort fundamental elements of the discussion.

You will not be surprised, therefore, if I decline to comment upon statements by the government of Quebec or other participants in constitutional discussions. In my view, negotiations carried out in a public forum run the risk of undermining our efforts at establishing "the minimal conditions of success" for constitutional negotiations with Quebec and the rest of the country. And our objective is not only to engage in such negotiations but to bring them to a successful conclusion.

I fully appreciate the frustration many Quebecers feel after so many years of unfulfilled expectations; however, attempting to solve all our constitutional problems at once runs the risk of ending in failure. That is why the Prime Minister, in his speech in Sept-Îles, gave high priority to the repatriation of Quebec; that is, to bringing Quebec back to the constitutional table with honour and generosity so that it can then participate fully in the discussions and debates that will be required in the longer term as we deal with such difficult issues as institutional reform and changes to the separation of powers in certain areas.

Like Mr. Rémillard, I, too, feel the November 1981 constitutional accord is an "incomplete compromise". I believe that above all else we must complete this compromise and close the file on repatriation which we inherited from our predecessors. To do so, we should limit ourselves as much as possible to essential items which need immediate attention.

Nothing would hurt this country more than a constitutional bidding war, which would plunge us into endless negotiations and delay indefinitely the repatriation of Quebec.



Having said this, for the moment I leave it to the experts to consider how we might remove all obstacles to this repatriation and clear the way for the constitutional future of Quebec and Canada.

I simply wish to say that a Canada with greater respect for Quebec's distinctiveness would not, in my view, be a weaker Canada, but a stronger one.

Once they are convinced they will be accepted for what they are and assured of their cultural future, Quebecers will accept more readily their role in the joint effort needed to help Canada face today's economic and political challenges. Thus, our economic strength and our cultural creativity will be greatly enhanced.

### **Beyond Economic Unity**

Furthermore, it is essential to strive towards this proper balance between economic solidarity and cultural security in order to strengthen the country, in law and particularly in fact. For, beyond our obvious community of economic interests, it is the acceptance of the language and culture of its two main communities that lies at the heart of the Canadian federation. My short time as Secretary of State has given me good reason to be optimistic in this regard.

There is a lesser fear among Anglophones in the West, Ontario or the Maritimes, for example, that French will be forced down their throats. A new acceptance of our duality seems to me to be replacing in a very encouraging way the negative perceptions and anxieties of yesteryear.

I do not suggest that those who feared "Bilingual Today, French Tomorrow" have all vanished. I simply point to the fact that in Toronto and Calgary, parents are lining up to register their children in French immersion courses. I observe that Canadian Parents for French has about twelve thousand enthusiastic members. I note that a survey conducted in July 1984 showed that sixty-eight per cent of the Anglophones questioned felt their children should learn French in school in order to become bilingual.

I was gratified to read a recent editorial on the Paquette case in the Edmonton Journal stating that "Justice William Sinclair's ruling that an Ontario Francophone is entitled to an Alberta jury trial in his native language is a triumph for all Canadians." When the holding of a francophone summit captures the interest of Canadians throughout the country, when Ontario Premier David Peterson speaks solely in French at a dinner for the Association canadienne française de l'Ontario, and when the Ontario government tables a bill to ensure French language services to its population, one must admit that times are changing in Canada.

This new open-mindedness on the part of English-speaking Canadians is accompanied by a similar change among French-speaking Quebecers, who generally desire a less meddlesome form of protection for the French language in their province, as well as improved teaching of English within the Quebec school system. Furthermore, Quebec's renewed interest in Francophones in other provinces, an interest expressed in the past by Mr. Johnson and again today under Mr. Bourassa, is a source of hope not only for Francophones outside Quebec, but for all those who believe in the future of this country.

I welcome wholeheartedly any assistance the Quebec government might offer the francophone communities in other provinces and I plan to work closely with my Quebec counterparts to maximize the results of our joint efforts for French-speaking Canada.

Changes of this type make a nation's sense of community even stronger, and the government has taken this true sign of the times into account in developing a program to renew our official languages policy.

As you know, all governments in Canada are required under the Canadian Charter of Rights and Freedoms to amend their laws so that they comply with the provisions of the Charter.

For the federal government, this means, among other things, an extensive revision of the Official Languages Act. It also means a re-examination of government policies and practices regarding language of work and language of service, within both the federal administration and Crown corporations such as Air Canada, Via Rail and Canada Post.

The Minister of Justice, the President of the Treasury Board and I, with the support of the Cabinet, are already at work on the various elements of these language reforms. All this is needed to consolidate, at the federal level, the institutional bilingualism espoused by the Laurendeau-Dunton Commission and established by the Official Languages Act of 1969.

But beyond the bilingualization of the federal government, what concerns me most as Secretary of State is the need to make the whole of Canadian society more open to the country's linguistic duality and to strengthen our official language minority communities so that they may flourish and take full advantage of bilingual services provided by the federal government, the provinces, municipalities and private organizations.

Institutional bilingualism is of course essential, but it alone is not enough to make Canada a place which is receptive to the use of both official languages and where both official language groups can grow and feel truly at home.

We need a society which is more conscious of the individual and collective enrichment which results from the use of two such universal languages as English and French.

We also need a community lifestyle and cultural environment which give to Francophones outside Quebec as well as Anglophones in Quebec the real possibility of living in their own language, of using the English- and French-language services available to them, and of exercising the rights guaranteed by the Constitution.

But it must be admitted that even if the federal government has an important role to play in offering various programs and bilingual services in a more active and better coordinated fashion, it is the provinces, municipalities and private organizations which have the greatest impact on the day-to-day language environment of our Anglophone and Francophone minorities.

The task of giving an authentic equality of opportunity to this country's English- and French-speaking citizens is truly a joint venture, calling for the participation of all governments and private organizations in Canada. I am very much aware of this, and I plan to reassess the priorities of the Department of the Secretary of State and rethink its work methods in order to promote a better coordination of federal programs and to make possible a true partnership with the provinces and the private sector. These efforts will be designed to ensure that our minority communities may flourish and that both official languages become more deeply rooted in Canadian society as a whole.

Better educational services for our official language minorities. Greater control over their educational institutions in accordance with s. 23 of the Canadian Charter of Rights and Freedoms. Improvements in the teaching of English and French as second languages. Joint action by the federal and provincial governments to improve the lot of our official language minority communities; in particular, drawing upon the resources offered by Quebec to assist Francophones outside Quebec. Support for private sector groups wishing to promote the use of English and French throughout Canadian society. These are just some of the objectives I feel we must pursue if we are to extend and perfect the institutional bilingualism that has been a reality in this country for more than fifteen years.

To put it plainly, we need greater coordination and commitment from all governments and all the key players in Canadian society to build a Canada that is more tangibly open to our linguistic duality, a Canada in which Quebec will feel it is a full partner because French is just as much at home as English, and because Francophones in the rest of the country are treated comparably to Anglophones in Quebec.

I say comparably, because differences from province to province cannot be ignored. The myth of a uniformly imposed "coast to coast" bilingualism has already caused sufficient harm and should be avoided.

What we must conceive and put into place is a coordinated and realistic Canadian plan, which takes into account regional differences, but does not use them as an excuse to avoid facing the obligations which the country's linguistic duality and the need to respect the rights of our official language minorities place upon governments and all the major partners in Canadian society.

It is in this way, and apart from any constitutional accord, that we will succeed in securing in the lives of Canadians the will to bring together Quebec and the rest of the federation, of which this conference provides eloquent testimony.

## APPENDIX C

### QUEBEC. THE MONT GABRIEL CONFERENCE AND THE SUPREME COURT OF CANADA

by WILLIAM R. LEDERMAN

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In his keynote address to the Mont Gabriel Conference, Mr. Gil Rémillard, Quebec's Minister of Intergovernmental Affairs, explained five respects in which his Government would like to see Canada's new constitutional arrangements of 1982 modified. If these conditions could be met by agreed amendments, he indicated his Government would give its full assent on behalf of Quebec to the new arrangements of 1982, as thus modified. The fifth of these conditions concerned the Supreme Court of Canada. Mr. Rémillard said that "we would like assurances that Quebec will be a full participant in the process of selecting or nominating Supreme Court Judges": and also "we would like assurances that the Supreme Court has now been "constitutionalized" so as to be beyond the reach of change in essential respects by a statute of the Parliament of Canada only. In particular he mentioned Quebec's present entitlement to three of the nine judges of the Supreme Court (section 6 of the *Supreme Court Act*) as something that should be constitutionally guaranteed.

It appears from Professor Leslie's report of the Mont Gabriel conference that there was no discussion of the Supreme Court conditions except that "one person singled out the composition of the Supreme Court as a major stumbling block, in that other provinces too might claim representation". The lack of discussion was unfortunate, because there are several points that could have been made. Accordingly, I am glad of the opportunity to offer further comments as an appendix to the Conference Report.

Concerning the constitutionalizing of the Court, I hold the view that this has already been done, including the guarantee of three of the nine judges for Quebec. It was accomplished on 17 April 1982, when sections 41(d) and 42(1)(d) of the *Constitution Act, 1982* came into force, along with virtually all the other sections of that Act. Under section 41(d) the

consents of all the provincial legislatures of Canada are necessary to change "The composition of the Supreme Court of Canada". (This includes the three judges for Quebec). Section 42(1)(d) provides that other *essential* changes to the Supreme Court (e.g. its final plenary appellate jurisdiction for Canada) require the consent of seven of the ten provinces with a population comprising at least fifty per cent of the population of all the provinces. In both cases, of course, the consent of the Parliament of Canada is required as well.

In other words, all the essential sections of the Supreme Court Act of the Parliament of Canada were and are, from 17 April 1982, constitutionalized, because they are subject to the special amending procedures just explained. There are 102 sections in the Canadian Parliament's *Supreme Court Act* as it stood on 17 April 1982. Those sections essential to the composition, powers and functions of the Court are under either section 41(d) or 42(1)(d) of the *Constitution Act, 1982*. The remaining *Supreme Court Act* sections are of a secondary or housekeeping character, and could still be changed by the Parliament of Canada alone.

Some Canadian constitutional experts dispute what I have just said and consider sections 41(d) and 42(1)(d) of the *Constitution Act, 1982* to be suspended and not operative. I cannot say why they take this position as I do not understand their reasoning. Anyway, Mr. Rémillard would like the matter settled. In my view, the *only* institution with the power to settle the issue is the present *Supreme Court of Canada* itself, which has the final power to interpret the Constitution, including the Act of 1982. It takes only an order-in-council from the Federal Government to refer the question to the Supreme Court for an answer.

Mr. Rémillard's other point about the Supreme Court of Canada concerned the method of selecting judges for appointment to the Court. He wished the Quebec Government to participate, at least in the selection of the three Quebec judges. At present, all Supreme Court judges are appointed by the Federal Cabinet alone, after having been selected in ways that are secret and confidential to the Prime Minister and his advisers. There is no requirement for consultation with a Provincial Government or with anyone else. There has been general dissatisfaction with this way of doing things, which obtains for all the superior courts of the Provinces as well as the Supreme Court of Canada. In 1985, select committees of the Canadian Bar Association and the Canadian Association of Law Teachers each brought in reports that concurred in principle on recommended changes in the appointing process for superior court judges. The full Council of the Canadian Bar Association and the Annual Meeting of the Canadian Association of Law Teachers endorsed these reports in 1986. Both recommended that the

judicial appointing powers of the federal government should be exercised under the advice of nominating committees or councils that were representative of the federal government, the provincial government or governments concerned, the Canadian Bar Association, the provincial law societies, the chief justices concerned and the lay public. These would be well-staffed search committees permanently in the business of discovering and maintaining lists of persons who would make good judges. The appropriate committee would recommend two or three names to the federal government when a judicial vacancy occurred, and the government would be expected to appoint one of the recommended persons.

In the special context of Quebec's concerns about participating in the appointing process of Supreme Court of Canada judges from Quebec, the judicial nominating council for Quebec on this plan would give the Quebec government meaningful participation. Indeed, this would extend to all the superior court appointments in Quebec. Generally implemented across Canada, this plan would do as much for every other provincial government in relation to federal judicial appointments. *There could be no complaint of special treatment for Quebec.* The one comment reported about the Supreme Court of Canada conditions of Mr. Rémillard at the Mont Gabriel Conference did complain of special representation for Quebec and not for the other provinces respecting appointments. This is not a valid complaint, because, by custom, in the present Court of nine, Ontario has a quota of three, the four western provinces a quota of two and the Atlantic provinces a quota of one. This customary distribution is scrupulously observed, and in my view is proper and inevitable in a country such as Canada. These are all large regions in each of which top-level candidates for appointment to the Supreme Court of Canada could be found by diligent search committees appropriate to Ontario, or Quebec, or the western or Atlantic regions.

Thus, in the course of making reforms in the appointing process for superior court judges - reforms that are worth doing anyway, right across Canada - Mr. Rémillard's fifth condition about Quebec appointments to the Supreme Court of Canada could be met.

## APPENDIX D

### AGENDA AND AGENDA NOTES

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#### AGENDA

May 9

11:00 a.m. Conference registration begins

12:00 noon Buffet Luncheon

2:00 p.m. Opening remarks by *Peter M. Leslie*  
(conference chairman)

2:10 p.m. Address *Gil Rémillard*  
Minister of International Affairs and  
Minister Responsible for  
Canadian Intergovernmental Affairs  
Government of Quebec

3:00 p.m. Round table "*Political Generations in Quebec*"

Chair *Paul-André Comeau*  
Editor in Chief  
LE DEVOIR

Panelists *Soucy Gagné*  
Sorécom Inc.

*Eric Maldoff*  
Martineau Walker  
(former President of Alliance Quebec)



*Marcel Pépin*  
Département des relations industrielles  
Université de Montréal

*Serge Racine*  
Shermag Inc.

*Florian Sauvageau*  
Co-Chairman  
Task Force on Broadcasting Policy

6:00 p.m. Reception

7:00 p.m. Dinner

Speaker *The Honourable Benoît Bouchard*  
Secretary of State of Canada

**May 10**

9:00 a.m. Round table *"Policy Roles and Responsibilities  
(I): Language"*

Chair *Peter M. Leslie*  
Director  
Institute of Intergovernmental  
Relations

Panelists *Pierre Foucher*  
Faculté de droit  
Université de Moncton

*Hubert Guindon*  
Department of Sociology  
Concordia University

*Serge Plouffe*  
Président  
Association canadienne-française  
de l'Ontario

10:45 a.m. Round table *"Policy Roles and Responsibilities  
(II): Social Affairs"*

Chair *Diane Wilhelmy*  
Secrétaire générale associée aux  
affaires intergouvernementales  
canadiennes  
Gouvernement du Québec

Panelists *René Dussault*  
École nationale d'administration  
publique

*Derek Hum*  
St. John's College  
University of Manitoba

*Andrée Lajoie*  
Faculté de droit  
Université de Montréal

12:30 p.m. Luncheon

2:00 p.m. Round Table "*Policy Roles and Responsibilities  
(III): Economic Development and the  
Control of Economic Institutions*"

Chair *Roland Parenteau*  
École nationale d'administration  
publique

Panelists *Claude Lemelin*  
Deputy Secretary to the Cabinet for  
Federal-Provincial Relations  
Government of Canada

*Thomas Courchene*  
University of Western Ontario and  
École nationale d'administration  
publique

*Tex Enemark*  
Former President  
Mining Association of  
British Columbia

*Pierre Pettigrew*  
Samson Bélair

6:00 p.m. Reception given by the Government of Quebec

7:00 p.m. Dinner followed by show: Claude Landré,  
political humorist

**May 11**

9:30 a.m. Concluding Discussion *"Elements in a Constitutional Settlement"*

Chair *John Meisel*  
Department of Political Studies  
Queen's University

12 noon Conference ends

## AGENDA NOTES

### Background

Quebec has never recognized the legitimacy of the Constitution Act (1982). The Constitutional Accord reached by the Government of Canada and the governments of nine provinces in November 1981 isolated Quebec, causing it to suspend normal relations with the ten governments, its Confederation partners. Considerable progress has since been made towards re-establishing normal ties, but the task of rebuilding the relationship between Quebec and its Confederation partners remains incomplete. In May 1985 the Government of Quebec indicated its desire to renegotiate some aspects of the package of reforms adopted in 1982, and published a set of proposals for constitutional reform. New proposals are expected from the government of Mr. Robert Bourassa, elected in December 1985; and Prime Minister Mulroney has indicated his desire and intention to reach agreement on amendments to the Constitution Act prior to the next Quebec election.

The task of "bringing Quebec into the Constitution" of its own volition is the most obvious element in ending Quebec's isolation and re-establishing normal ties between Quebec and its Confederation partners; but it is not the only element. Nor is it certain that it is the most urgent or important element, in the sense that it has the highest priority for Quebecers. Most Quebecers probably consider that strengthening the Quebec economy occupies first place on the agenda. If so, that might suggest re-ordering the priorities. Might it be better to concentrate at first on achieving effective intergovernmental coordination and cooperation on economic issues, and to leave the resolution of the constitutional issue until later? Or, conversely, is reaching a constitutional settlement a *precondition* for rebuilding a normal working relationship between Quebec and its Confederation partners? To the extent that the rest of Canada appears unwilling to reopen some of the issues settled among the ten governments in November 1981, it might make sense not to press for formal amendment of the Constitution Act. In that case, new questions arise: what events or considerations might again impart a sense of urgency on the constitutional issue for the rest of Canada, inducing the ten governments to adopt a more flexible attitude; and is it tolerable that Quebec should continue indefinitely to be suspended in its present constitutional limbo?

Whether priority is given to the constitutional issue or to re-establishing effective intergovernmental relations (if indeed a

meaningful distinction can be made between the two), the central task in rebuilding the relationship between Quebec and its Confederation partners will be to work out the implications of a basic fact about this country of ours - namely the existence, within Quebec, of a society that is imbued with a sense of its historical uniqueness and is intensely conscious of the opportunities and challenges that face it as a collectivity. Do the distinctiveness and special interests of Quebec justify its having more extensive powers than the other provinces? Concretely, what areas of policy, and what types of institution, need Quebec control in order to continue developing and growing as a "live" and unique society - to be what it wants to be? It is essential to know whether Quebecers and other Canadians hold similar or at least compatible views on this and on other issues, such as the structure of political institutions at the centre.

While it is widely agreed that Quebec forms, within Canada, a distinct society, opinions differ over the extent to which other provincial or regional societies are also distinctive. Those who hold the "regional societies" view are like to assert that all provinces must have comparable powers and policy responsibilities in order to meet the needs, desires, and aspirations of their respective populations. On the other hand, those who regard Quebec's needs, desires, and aspirations as qualitatively different, tend to argue that Quebec needs more extensive powers and policy responsibilities than the other provinces.

These questions are hardly perennials. However, as cultural patterns, citizens' expectations of government, and economic circumstances change, political and constitutional aspirations change with them. Thus it is important to ask afresh, in the circumstances now prevailing: how pervasive is dualism in its constitutional and governmental effects - and should we think of dualism in terms of "Anglophone and Francophone" or in terms of "Quebec and the rest"?

*Round Table: May 9, 3:00 p.m.*

### **"Political Generations in Quebec"**

In this session the group will explore changing political attitudes and priorities in Quebec, and will discuss the strength and course or character of Quebec nationalism. To do this it will be necessary to look broadly at changes in Quebec society and culture, and in the Quebec economy. Some questions for discussion:

- a) For the generation that came to maturity in the 1960s, politics became a vital force, and for many an absorbing passion. It went without saying that the focal point of political interest was the

Quebec state. However, it appears that since the referendum of May 1980 there has been a sharp decline in interest in politics ("depolitization"), especially among youth. Economic concerns appear now to dominate. Quebec nationalism seems to have receded, or to have gone into hiding. What has actually happened? Is depolitization real or illusory? What changes in support, organization, and character have nationalist associations and political parties undergone?

- b) There are now some very prominent Francophone entrepreneurs, financiers, and managers. Are they distinguishable in any important way - politically, socially, or culturally - from their Anglophone counterparts? What do they expect from the Quebec government, and from Canada?
- c) In the past, the trade union movement in Quebec has been militant in contract negotiations; politically, it has been both nationalist and radical ("there is no future for Quebec in the capitalist system", etc.). What ideological currents are strongest now among Quebec workers? Note here: militancy; extent of support for socialism, whether democratic or revolutionary; reactions to the PQ's transformation into a conditionally federalist party, and views on the constitutional status of Quebec; attitudes on language issues, the Canadian Charter, and the Quebec Charter.
- d) The artistic community played a vital energizing role in the Quiet Revolution and in the movement for political independence. What political attitudes prevail in the artistic community in the latter 1980s, or what is its political mood and its current political significance?
- e) What is the present-day economic, social, and political position of Quebec Anglophones, and how do they view their own future?
- f) Those now graduating from Quebec universities, many of them as engineers and MBAs, will be the future leaders of Quebec. For them, the Quiet Revolution - with its heady political atmosphere and the transformation of the state into the dominant institution of Quebec society - is something to learn about in the history books; many of them must have no personal recollection (or only a very dim recollection) of the October crisis; the PQ will have been in office throughout most of the period since they became aware of politics. What is important to these people? What do they take for granted? And generally: *What is significant about the passing of political generations in Quebec?*

While the panelists in this session will focus on political attitudes in Quebec, it is anticipated that the discussion will consider attitudinal changes in the rest of Canada as well.

**Series of three sessions on policy roles  
and responsibilities - an introductory note**

In the past, spokesmen for the Government of Quebec have often stressed that its policy goals, and the conception it held of its own policy responsibilities, were unique. To them, discussions of Quebec's policy role routinely degenerated into a "dialogue of the deaf." They felt that as a rule Quebec aimed for goals towards which its Confederation partners were indifferent or even hostile; also, the rest of the country seemed to them to be agreed on objectives - and to accept federal initiatives aimed at achieving them - that threatened Quebec's development as a distinct society. To non-Quebecers, this perception of the Canadian situation has neglected to recognize how much diversity there is among the other provinces, and has failed to acknowledge how often Quebec has been aligned with several other provinces (sometimes with all of them) in opposition to the federal government.

To what extent - or in respect of what policy areas - do perceptions on such matters still diverge? Are perceptions now more congruent than in the past? If Quebec and its Confederation partners at least share a common reading of the facts, the prospects for rebuilding the relationship among them will be relatively good. While they will inevitably continue to disagree on various issues (otherwise there would be no reason to retain a federal form of government), ability to work together and to settle differences will be enhanced if the parties have a roughly similar estimate of the seriousness and the substance of policy conflicts among them. A similar interpretation of the situation will make it easier to respect and accommodate what each regards as essential to its welfare and to its very self.

To enquire into changing perceptions of policy roles and responsibilities, both for Quebec and for the other ten governments, it will be useful to look at specific fields of government action. Each of the three sessions on May 10 will focus on a particular policy area: language policy, social affairs, and economic affairs.

*Round Table: May 10, 9:00 a.m.*

### **“Policy Roles and Responsibilities (I): Language**

No subject is more closely related to the question of cultural security and cultural development than language policy. For the past twenty years a major objective of federal policy has been to give legislative and constitutional protection to specified minority language rights. English and French are now constitutionally recognized as official languages of Canada (that is, for matters pertaining to the activities of the federal government) and New Brunswick. An attempt to modify the constitutional status of the French language in Manitoba and to guarantee extended provision of services in French was unsuccessful. Ontario and Quebec have preferred to define language rights, particularly rights to delivery of services in minority languages, through the political process; they have avoided judicially-enforceable declarations of principle. However, the Quebec Anglophones are in a noticeably more advantaged position than the Ontario Francophones, both as regards the availability of minority language services and as regards the constitutional status of the minority language, and this rankles in Quebec.

On the one hand, language equality (English and French) has been considered an essential element in creating a sense of Canadian citizenship, and an essential support for Canadian unity; on the other, the constitutional restriction of provincial decision-making power has been resented as an infringement upon the political rights of provincial communities. In Quebec's case, any such infringement is seen as culturally threatening, given Francophones' position as a tiny minority (two per cent) within North America. Is there any discoverable solution to this dilemma?

*Round Table: May 10, 10:45 a.m.*

### **“Policy Roles and Responsibilities (II): Social Affairs”**

Control over social affairs, including health care and income supplementation policies, has traditionally been regarded as one of the cornerstones of provincial autonomy. The provinces have exclusive constitutional jurisdiction over hospitals (except marine hospitals), charities, and “eleemosynary” (alms-supported) institutions. The structure of these institutions, and of course their activities, have a large impact on how the individual person relates to the rest of society; consequently the provinces - and especially Quebec - have sought to



preserve their capacity to shape and develop such institutions in ways consistent with community values.

The federal government, however, has for many years been heavily involved financially in social affairs, both through fiscal transfers to provincial governments and through payments to individual persons. Nowadays many people appear to consider that all Canadians, regardless of province of residence, are entitled to broadly comparable public services; and there is evidently considerable support for federal initiatives (such as the Canada Health Act) that make Ottawa the instrument and guarantor of national standards. To define the extent of its responsibilities, or to prescribe for it a legitimate policy role, is fertile ground for conflict. Where does Quebec stand in relation to its Confederation partners on this set of issues, or (better) what is the range of opinion on this matter within Quebec, as compared with other parts of the country?

*Round Table: May 10, 2:00 p.m.*

### **“Policy Roles and Responsibilities (III): Economic Development and the Control of Economic Institutions”**

The provinces have various motives for wanting to gain some measure of control over economic policy and economic institutions - to promote regional development, to reinforce the positive effects of federal policies, and to counteract what are regarded as the negative effects of those policies. All provinces are evidently persuaded that there is advantage in becoming involved in the promotion of economic development.

Economic interventionism is in tension with the principle of free trade. Thus, while a majority of the provincial governments have declared in favour of negotiating a free trade agreement with the United States, an agreement that would necessarily cover non-tariff as well as tariff barriers, all provinces recognize that an agreement would constrain the exercise of their economic powers. They therefore have claimed a direct role in the negotiating process. This is but one way, though the most obvious and important way, that the issue of provincial involvement in economic affairs has recently acquired a strong international dimension.

Among all provinces, Quebec has shown the strongest inclination to assert an international role. Moreover, Quebec has, arguably, more potent reasons than the other provinces for wanting to become involved in economic affairs. These reasons centre around the desire to promote the economic equality of Francophones, and to reinforce the vitality of Francophone culture.

When a language is no longer used in earning one's daily living (i.e., when knowledge of the language no longer has any economic value), those who speak it may be exposed to assimilation. In addition, all social institutions, including those of a primarily economic nature, embody and express a particular set of values. Thus any clear-cut distinction between economic affairs and cultural matters may appear, to members of a minority group, brittle and arbitrary. Any community conscious of its existence as a distinct entity wants to be able to shape and control its economic institutions.

Does this mean that Quebec needs more extensive economic powers than the other provinces? If so, would the vesting of such powers in the Quebec government damage the economic interests of the other provinces? In other words, what are the economic dimensions of cultural distinctiveness, and what costs does the recognition of such dimensions (either formally, in the Constitution Act, or informally, through delegation, administrative arrangements, and intergovernmental agreements) impose (a) on Quebec, and (b) on other parts of Canada?

*Round Table: May 11, 9:30 a.m.*

#### **"Elements in a Constitutional Settlement"**

The earlier sessions will, it is hoped, have gone a long way towards establishing to what extent Quebec, in the latter 1980s, aspires to more extensive powers and a wider policy role than is the case with other provinces. The conference will conclude by discussing the constitutional implications of this situation. The following topics deserve consideration:

- a) The priority that should be attached to reaching a formal constitutional settlement. How urgent, from Quebecers' perspective, is such a settlement? Is a settlement a precondition for establishing a good working relationship, or should governments concentrate first on establishing effective intergovernmental relations, and tackle the constitutional issue later? How long is it tolerable that Quebec remain in constitutional limbo?
- b) The willingness of the rest of Canada to accommodate Quebec's constitutional aspirations: sympathy with objectives, and factors inducing flexibility or a willingness to reach an accommodation (now or in the foreseeable future). What conditions would make a constitutional settlement urgent for the rest of Canada, and give the ten governments a strong incentive to make concessions? Conversely, are there demands that the rest of the country might

make upon Quebec, for example regarding its blanket invocation of the "notwithstanding" clause of the Canadian Charter of Rights and Freedoms (article 33)?

- c) Whether more extensive powers for Quebec need be given constitutional recognition and constitutional guarantees, or whether it is sufficient that its policy responsibilities be expanded through delegation of powers and a facilitating set of fiscal arrangements. Would such an informal extension of Quebec's *de facto* role be acceptable, both to Quebec and to others?
- d) Specific items for negotiation:
- amending formula: veto power; financial compensation
  - structure of central institutions
  - applicability of the Canadian Charter of Rights and Freedoms to Quebec, especially in language matters; the constitutional status of the French language outside Quebec
  - the economic powers of provincial governments, and other specific items relating to the division of powers.

## APPENDIX E

### PARTICIPANTS

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Brian Barrington-Foote  
Coordinator, Constitutional Relations  
Department of Justice  
Government of Saskatchewan

Louise Bertrand  
Chef de Cabinet au  
Secrétaire d'État du Canada  
Gouvernement du Canada

l'Honorable Benoît Bouchard  
Secrétaire d'État du Canada  
Gouvernement du Canada

Alan C. Cairns  
Department of Political Science  
University of British Columbia

Douglas Carr  
Ministry of Intergovernmental Affairs  
Government of Ontario

Paul-André Comeau  
Rédacteur-en-chef  
LE DEVOIR

Thomas J. Courchene  
École nationale d'administration  
publique, Montréal

Donald Dennison  
Coordinator  
Intergovernmental Affairs and  
Legislation  
Government of New Brunswick

James Duff  
CBC, Montreal

René Dussault  
École nationale d'administration  
publique  
Université du Québec

James de Wilde  
School of Business  
University of Western Ontario

Stefan Dupré  
Department of Political Science  
University of Toronto

John Eleen  
Research Director  
Ontario Federation of Labour

Tex Enemark  
Vancouver

Pierre Foucher  
Faculté de droit  
Université de Moncton

Graham Fraser  
The Globe and Mail

Jacques Frémont  
Faculté de droit  
Université de Montréal

Jean-Pierre Gaboury  
Département de science politique  
Université d'Ottawa

Soucy Gagné  
SORECOM  
Montréal

Michael Goldbloom  
Martineau Walker  
Montreal

Hubert Guindon  
Département de sociologie  
Université Concordia

David Hawkes  
Institute of Intergovernmental Relations  
Queen's University

Derek Hum  
St. John's College  
The University of Manitoba

Andrée Lajoie  
Faculté de droit  
Université de Montréal

François Lebrun  
Société de développement  
industriel du Québec  
Montréal

Claude Lemelin  
Deputy Secretary to the Cabinet for  
Federal-Provincial Relations  
Government of Canada

Oryssia Lennie, Executive Director  
Constitutional Affairs and Social  
Policy Coordination  
Department of Federal and Intergovernmental  
Affairs  
Government of Alberta

Peter M. Leslie  
Institute of Intergovernmental Relations  
Queen's University

The Honourable Roy MacLaren  
Canadian Business Media Ltd.

Eric Maldoff  
Martineau Walker  
Montreal

Peter Meekison  
Vice-President (Academic)  
University of Alberta

John Meisel  
Department of Political Studies  
Queen's University

Diane Morissette  
Advisory Council on the Status  
of Women  
Ottawa

Andrew Noseworthy  
Intergovernmental Affairs  
Government of Newfoundland

Brian Olson  
NOVA, an Alberta Corporation

Roland Parenteau  
École nationale d'administration  
publique  
Université du Québec

Maurice Patry  
École nationale d'administration  
publique  
Université du Québec

Marcel Pépin  
Département des relations industrielles  
Université de Montréal

Caroline Pestieau  
Commission d'accès à l'information  
Gouvernement du Québec

Pierre Pettigrew  
Samson Bélair  
Montréal

Serge Plouffe  
Président  
Association canadienne-française  
de l'Ontario

Gary Posen  
Deputy Minister  
Ministry of Intergovernmental Affairs  
Government of Ontario

Serge Racine  
SHERMAG  
Montréal

Gil Rémillard  
Ministre des affaires internationales  
Gouvernement du Québec

Claude Rocan  
Intergovernmental Affairs  
Government of Saskatchewan

Jean-Claude Rivest  
Bureau du Premier Ministre  
Gouvernement du Québec

Gordon Robertson  
Institute for Research in Public Policy



Donald Dennison  
Coordinator  
Intergovernmental Affairs and  
Legislation  
Government of New Brunswick

James Duff  
CBC, Montreal

René Dussault  
École nationale d'administration  
publique  
Université du Québec

James de Wilde  
School of Business  
University of Western Ontario

Stefan Dupré  
Department of Political Science  
University of Toronto

John Eleen  
Research Director  
Ontario Federation of Labour

Tex Enemark  
Vancouver

Pierre Foucher  
Faculté de droit  
Université de Moncton

Graham Fraser  
The Globe and Mail

Jacques Frémont  
Faculté de droit  
Université de Montréal

Jean-Pierre Gaboury  
Département de science politique  
Université d'Ottawa

Barry Toole  
Deputy Minister  
Intergovernmental Affairs and  
Legislation  
Government of New Brunswick

André Tremblay  
Faculté de droit  
Université de Montréal

l'Honorable Arthur Tremblay  
Sénat du Canada

Ronald L. Watts  
Department of Political Studies  
Queen's University

Stuart Whitley  
Director, Constitutional Law  
Department of the Attorney General  
Government of Manitoba

John Whyte  
Faculty of Law  
Queen's University

Diane Wilhelmy  
Secrétaire générale associée aux  
Affaires intergouvernementales canadiennes  
Gouvernement du Québec