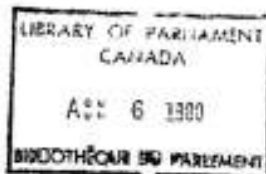


MEETING OF THE CONTINUING COMMITTEE
OF MINISTERS ON THE CONSTITUTION

NATURAL RESOURCES

Notes for a Statement by Quebec



Montreal, Quebec
July 8-11, 1980

1- THE IMPORTANCE OF NATURAL RESOURCES FOR QUEBEC:

SOME FIGURES

Quebec is particularly well endowed with natural resources of all kinds: mines, minerals, water, electricity, forests, arable land. From the standpoint of economic development, these resources represent a marked advantage for Quebecers. They are the cornerstone of the economy in certain regions, and, overall, provide tens of thousands of direct and indirect jobs.

Some figures provide a measure of these Quebec assets. Thus, in 1977, forestry exploitation and the production of pulp and paper, lumber, veneer and plywood represented a value of \$3.15 million. For the same year, the mining sector contributed more than \$1.79 million to Quebec's external balance of trade. Quebec's mining reserves are also quite considerable; they represent 36 per cent of world reserves of asbestos, 10.7 per cent of world reserves of titanium and approximately 5 per cent of world reserves of iron, lithium and niobium.

The best known and the most topical energy resources largely consist of hydroelectric resources. Some 16,700 megawatts have been brought on stream so far in Quebec, and some 18,000 others will probably be added by 1990. Quebec's hydroelectric potential is currently assessed at approximately 100,000 megawatts. This potential is the equivalent of the production of 2,800,000 barrels of oil per day, the amount that would be required to obtain the same quantity of electricity from conventional power stations.

Quebec has taken charge of the development of its natural resources through, such public institutions as Hydro Quebec, Soquem, Soquip, Rexfor, the James Bay Energy Corporation and the James Bay Development Corporation, of which Quebecers have reason to be proud.

2- NATURAL RESOURCES AND THE CONSTITUTION

a) Provincial ownership and Ottawa's general powers

Proprietary rights over natural resources in the public domain belong clearly to the provinces.

In the case of Quebec, these rights, which existed prior to 1867, were reaffirmed in the BNF Act. There is therefore no doubt as to ownership.

The constitutional problem, as far as resources are concerned, stems from the fact that government intervention in the areas of water, energy, the environment, forestry and mines is practised by Ottawa as well as by the provinces. In order to act within provincial territory, the central government bases its action not on proprietary rights, which it does not possess in any case, but on various legislative powers in relation to certain aspects of natural resources. It also possesses general powers, which, in this area as in others, often gives it sufficient weight to block provincial initiatives, hence the negation of the fact of provincial ownership rights. These federal interventions are also at the basis of the duplication of many federal-provincial services.

These general powers of the Parliament of Canada give it the opportunity to encroach on provincial domains in various ways. Thus, the federal declaratory power is a discretionary power, under which Ottawa may, by a mere declaration, take control of works which otherwise come under provincial jurisdiction. This power has already been used specifically to bring nuclear energy under federal authority. This could also be the case for oil or electricity if circumstances so dictated in Ottawa's view.

The central government also has another general power based on the clause governing "the Peace, Order and good Government of Canada". The Canada Water Act, adopted in 1970 is, in fact, based on this power. This Act even permits the federal minister of Energy, Mines and Resources to plan the management of provincial waters, even without the agreement of the provinces concerned. This statute may, for example, block all provincial legislation concerning waterways located entirely within a province.

"Implicit power", another major general power, also authorises Ottawa to encroach on provincial domains.

Recent amendments to the Fisheries Act require federal approval for any initiative concerning water likely to affect aquatic fauna. By bringing the management of water under the fisheries regulations, Ottawa is bringing under its control most of the provincial initiatives on water.

The Energy Supplies Emergency Act, adopted in 1974 by Ottawa, also stems from the use of the general powers of the federal Parliament: in this case, it is a question of an emergency power. The then government of Quebec did not fail to react by inviting the federal government to stay out of planning the distribution of natural resources. This law expired in 1976. However, if it is true that the emergency measures adopted by Ottawa suspend only temporarily the exercise of provincial powers, the "temporary" periods can sometimes last a long time. A crisis may be real or apprehended; emergency measures may also be applied for a subsequent so-called "reestablishment" period. Studies indicate that for 40 per cent of the period from 1914 to 1976, emergency measures were in force in one area or another.

b) Quebec's position

In common with the other provinces, Quebec has often sought that its exclusive rights to natural resources be formally recognized. We restate this position, taking as a basis a text submitted to the First Ministers in February 1979 by our Continuing Committee of Ministers, but laying particular stress on the need to limit the general powers of the Parliament of Canada. In fact, as the discussion of these powers, unfortunately, does not appear on the agenda of the present round of negotiations, and as these powers may have a major influence on provincial authority in relation to natural resources whatever they may be, we request a constitutional provision which would explicitly prevent the exercise of general powers with respect to natural resources unless the agreement of the province in question has been obtained. This idea was already

admitted, with respect to the declaratory power, in the document submitted to the First Ministers in February 1979.

We wish to prevent any future takeovers by Ottawa, to all intents and purposes, of Quebec's natural resources

through actions based on the existence of general powers such as the residual power, implicit power, declaratory power, spending power, disallowance and reservation power, the power to enact legislation for "the peace, order and good government of Canada" or the emergency power. Also to be avoided are other federal intrusions which might be based, for example, on Ottawa's powers in relation to trade or taxation.

It is Quebec's view that the problems in relation to natural resources can be resolved if the provinces and Ottawa, as major, responsible partners, agree on certain fundamental principles, for example to ensure guarantees of supplies in periods of crisis. In this respect, Quebec would be prepared to commit itself vis-à-vis the other provinces, in return for a similar commitment on their part, to give the provinces priority to Quebec's natural resources for export outside Canada at the external expected price.

Quebec considers that the provinces have to date developed and demonstrated their ability to manage and effectively develop their natural resources. Consequently, they can, in the future, assume exclusive legislative authority over these resources without automatically requiring authoritarian federal intervention, as if, by definition, the provinces were incapable of acting for the common good.

Attached is the legal text proposed today by Quebec. This text is based, with some reworking, on the one submitted to the First Ministers in February 1979 by the Continuing Committee of Ministers Responsible for the Constitution.

Natural resources

Constitutional text proposed by Quebec

92.1(1) In each province the legislature may exclusively make laws in relation to the following matters:

1. Exploration for, and the management, recovery, conservation and development of, natural resources within the province, and the processing, upgrading and use of commodities derived from those natural resources.
2. The management, conservation, development and use of electric energy produced within the province.
3. The regulation of intraprovincial and interprovincial trade and commerce in relation to commodities derived from natural resources within the province and to electric energy produced within the province.
4. The raising of money by any mode or system of taxation in respect of commodities derived from natural resources within the province and of electric energy produced within the province whether or not the commodities or the electric energy is exported in whole or in part from the province.

(2) Any law enacted by the legislature of a province pursuant to the authority conferred by subsection (1) is paramount over any law enacted by the Parliament of Canada, notwithstanding section 91.

(3) A work or undertaking situated within a province and related to the movement of commodities derived from natural resources within the province or the transmission of electric energy produced in the province (in this subsection called the "provincial work") shall not be held to be part of a work or undertaking connecting

that province with any other or others of the provinces, or extending beyond the limits of the province, (in this subsection called the "extra-provincial work") by reason of the fact that the provincial work is connected to the extra-provincial work if the provincial work is owned and controlled by a person other than the person who owns or controls the extra-provincial work.

(4) The Parliament of Canada has no legislative authority to make laws authorizing the taking from a province of any property belonging to a province or any rights in respect of that property without the consent of the government of the province.

(5) For the purposes of this section, a commodity shall be construed as being derived from natural resources if

- a) it is in the form in which it exists upon its recovery or severance from its natural state;
- b) in the case of a commodity derived from a non-renewable natural resource, it consists of a product resulting from processing or refining of the resource;
- c) in the case of a commodity derived from forest resources, it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, but does not consist of any product manufactured from wood;

d) in the case of a commodity derived from a renewable natural resource other than forestry resources, it consists of a product resulting from processing.

(6) Notwithstanding Sections 55, 56, 57 and 90,

a) the Governor General in Council has no power to disallow an Act of the legislature of a province made under the authority of this section, and

b) a Bill for an Act of the legislature of a province made under the authority of this section shall not be reserved for the signification of the Governor General's pleasure.

(7) Nothing in this section derogates from any of the powers or rights that a legislature or a government of a province has immediately before the coming into force of this section.