

LETTER FROM PREMIER LÉVESQUE
TO PRIME MINISTER TRUDEAU

December 17, 1982

Dear Prime Minister:

I believe that the time has come to express to you very clearly our position here in Quebec City with regard to a constitutional situation that is in essence the result of your actions, especially since the recent opinion of the Supreme Court has just contributed a conclusion that is so far the most logical and at the same time the most unacceptable

Thus, as the Court has told us, Quebec does not possess, and has never possessed, a right of veto, by convention or otherwise, that would protect it from constitutional amendments made without its consent and affecting its rights, powers and jurisdictions

This statement, which at least has the merit of clarity, denies a right whose existence had never been doubted and that had always been considered essential to defend the identity of Quebecers, who are the cornerstone of the North American Francophone community. If the representatives of Lower Canada in 1865 had realized that their agreement to the proposed Confederation would result in removing all protection against constitutional amendments imposed by others, there is no doubt that such agreement would never have been given

In September 1981, the same Supreme Court confirmed that Quebec had no legal protection against unilateral actions designed to modify the powers of its National Assembly without its consent and despite its strongest objections. Now, fourteen months later, Quebecers have also learned that they have never had any protection based on convention. In other words, since 1867 Quebecers have been living under the illusion that they had an insurance policy; today, after the violation of certain of their most vital collective rights, they find that in fact they have never been protected

This not only denies a past during which we relied on an illusion that has now vanished, but promises an even more perilous future. Now stripped of their illusions, Quebecers must learn to live at the mercy of the governments of English Canada. On November 5, 1981, following decisions made behind our back, we saw what this situation might mean for the constitutional future of Quebec.

If the Supreme Court wishes to give its legal blessing to this agreement reached under cover of night and signed just over a year ago between the Anglophone governments of Canada and your government, so be it. But I am obliged to inform you that the Canada Bill is nonetheless basically illegitimate and therefore absolutely unacceptable to Quebec and its government and, I am sure, to the very great majority of Quebecers. It will therefore be impossible for any government worthy of the name in Quebec to accept such a drastic and unilateral reduction of the powers of our National Assembly and to have imposed on it an amending formula that provides it with no real protection for the future.

The National Assembly already stated, in December 1981, the conditions under which this British constitutional statute might become acceptable. First, the Constitution Act must recognize not only the equality of the founding peoples but also the distinctiveness of Quebec society. Second, to ensure the vitality of that society, the amending formula of the Constitution of Canada must provide Quebec with a general right of veto or a right to opt out together with full financial compensation in all cases (a specific right of veto, or a "qualified" right of veto, to use the term employed by the federal Minister of Justice) Last, any Canadian Charter of Rights must not in any way alter the legislative jurisdiction of the National Assembly, particularly as regards the language of instruction and mobility rights (A true copy of the resolution of the National Assembly is attached)

In view of the opinion issued by the Supreme Court, all these conditions are more relevant than ever. But in the present situation, two of them have become more urgent: Quebec's (general or specific) right of veto, and the language of instruction.

On April 26, 1982, you said the following: "If Mr. Lévesque were to say tomorrow, let us work together and try to obtain for Quebec the right of veto provided at Victoria, I would give him my hand and I would say, very well, let us do that together." And on December 8, your Minister of Justice said that he was again ready to co-operate with Quebec to attempt to obtain for it a general or specific right of veto.

I would therefore ask you, as evidence of good faith and your apparent wish to grant Quebec its rightful place in Canada, to table a resolution to amend the Constitution as soon as possible and have it passed by both federal Houses, as provided by the Canada Bill.

Pursuant to the conditions indicated by the National Assembly, such a resolution would provide the Government of Quebec with either a general right of veto or a specific right of veto, that is, a right to opt out combined with full compensation in all cases. In addition, such a resolution would exempt Quebec from the application of Section 23 of the Canada Bill regarding the right of instruction in the minority language, thus entrenching Quebec's exclusive jurisdiction with respect to the language of education.

Since no constitutional amendment can be passed without the agreement of the federal government, you will understand that early tabling and passage of such a resolution in Ottawa constitute a necessity for Quebec and its government. I therefore trust that, as you hinted, you will be prepared to prove to the Quebec community that you can once again act to promote its rights and interests, even after injuring them to an extent that your predecessors would never have dared contemplate.

Your response, which we wish to receive as soon as possible, will certainly influence the outcome of the constitutional issue, at least with respect to Quebec.

Yours truly,

[Signed René Lévesque]

Encl.

c.c.: Provincial Premiers

RESOLUTION

L'Assemblée nationale du Québec,
rappelant le droit du peuple québécois à disposer de lui-même,

et exerçant son droit historique à être partie prenante et à consentir à tout changement dans la constitution du Canada qui pourrait affecter les droits et les pouvoirs du Québec,

déclare qu'elle ne peut accepter le projet de rapatriement de la constitution sauf si celui-ci rencontre les conditions suivantes :

1. on devra reconnaître que les deux peuples qui ont fondé le Canada sont foncièrement égaux et que le Québec forme à l'intérieur de l'ensemble fédéral canadien une société distincte par la langue, la culture, les institutions et qui possède tous les attributs d'une communauté nationale distincte;

2. le mode d'amendement de la constitution

a) ou bien devra maintenir au Québec son droit de veto,

b) ou bien sera celui qui a été convenu dans l'Accord constitutionnel signé par le Québec le 16 avril 1981 et confirmant le droit du Québec de ne pas être assujéti à une modification qui diminuerait ses pouvoirs ou ses droits et de recevoir, le cas échéant, une compensation raisonnable et obligatoire;

3. étant donné l'existence de la Charte québécoise des droits et libertés de la personne, la charte des droits inscrite dans la constitution canadienne ne devra inclure que :

a) les droits démocratiques;

b) l'usage du français et de l'anglais dans les institutions et les services du gouvernement fédéral;

c) l'égalité entre les hommes et les femmes, pourvu que l'Assemblée nationale conserve le pouvoir de faire prévaloir ses lois dans les domaines de sa compétence;

The National Assembly of Québec,
mindful of the right of the people of Québec to self-determination,

and exercising its historical right of being a full party to any change to the Constitution of Canada which would affect the rights and powers of Québec,

declares that it cannot accept the plan to patriate the Constitution unless it meets the following conditions:

1. It must be recognized that the two founding peoples of Canada are fundamentally equal and that Québec, by virtue of its language, culture and institutions, forms a distinct society within the Canadian federal system and has all the attributes of a distinct national community;

2. The constitutional amending formula

(a) must either maintain Québec's right of veto or

(b) be in keeping with the Constitutional Accord signed by Québec on April 16, 1981 whereby Québec would not be subject to any amendment which would diminish its powers or rights, and would be entitled, where necessary, to reasonable and obligatory compensation;

3. Given that a Charter of Human Rights and Freedoms is already operative in Québec, the Charter of Rights and Freedoms to be entrenched in the Canadian Constitution must limit itself to:

(a) democratic rights;

(b) use of French and English in federal government institutions and services;

(c) equality between men and women provided the National Assembly retains the power to legislate in matters under its jurisdiction;

d) les libertés fondamentales, pourvu que l'Assemblée nationale conserve le pouvoir de faire prévaloir ses lois dans les domaines de sa compétence;

e) les garanties quant à l'enseignement dans la langue des minorités anglaise ou française, pourvu que le Québec reste libre d'y adhérer volontairement, puisque sa compétence exclusive en cette matière doit demeurer totale et inaliénable et que la situation de sa minorité est déjà la plus privilégiée au Canada;

4. on donnera suite aux dispositions déjà prévues dans le projet du gouvernement fédéral concernant le droit des provinces à la péréquation et à un meilleur contrôle de leurs richesses naturelles

COPIE CONFORME DE LA
RÉSOLUTION ADOPTÉE PAR
L'ASSEMBLÉE NATIONALE DU
QUÉBEC LE 1^{er} DÉCEMBRE 1981.

Signé à Québec ce

16 décembre 1982

(d) fundamental freedoms provided the National Assembly retains the power to legislate in matters under its jurisdiction; and

(e) English and French minority language guarantees in education, provided Québec is allowed to adhere voluntarily considering that its power in this area must remain total and inalienable and that its minority is already the most privileged in Canada

4 Effect must be given to the provisions already prescribed in the federal proposal in respect of the right of the provinces to equalization and to better control over their natural resources.

TRUE COPY OF THE RESOLUTION
PASSED BY THE NATIONAL ASSEMBLY
OF QUEBEC ON 1 DECEMBER
1981

Signed in Québec City on the

16 December 1982

[Signed René Blondin]

RENÉ BLONDIN

Secrétaire général de l'Assemblée nationale