

TELEX FROM PRIME MINISTER TRUDEAU TO PREMIER LÉVESQUE

December 24, 1982

My dear Premier:

In your telex of December 17, you requested that I ask the Parliament of Canada to adopt "a resolution which would recognize the right of the Government of Quebec to either a general veto or a specific veto, that is, a right to opt out with full compensation in all cases" You also insisted that this resolution should exempt Quebec from the Canada clause contained in section 23 of the Canadian Charter of Rights and Freedoms

This request strikes me as somewhat curious coming from a government which only yesterday was denouncing federal unilateralism and which has declined to participate in any way in the preparatory work for the constitutional conference scheduled for March. I am wondering therefore if you have made similar requests of the premiers of the other provinces since, as you well know, the Parliament of Canada cannot now, any more than it could before patriation, act alone to determine or to change the amending formula in our constitution.

If we had this power, you would not today have to seek special measures to protect the Quebec identity, since we all know that the federal Parliament would have opted for the Victoria formula, which recognized a veto for Quebec. Since the federal government has been on record as favouring this formula for more than 10 years — and thus already subscribes to the principle of a veto — you would be better advised to direct your request in the first instance to your colleagues of the other provinces

You place great importance in your telex on the recent Supreme Court judgement which, in your view, denies "a right of veto the existence of which has never been doubted and which has always been considered essential for the protection of the people of Quebec, cornerstone of the Francophones of North America"

I would like to ask you a simple question If this right was so indisputable and so indispensable, why was it that you made no mention of it in the agreement you signed in April, 1981, with the other provinces, which opposed the constitutional initiatives of the federal government, Ontario and New Brunswick?

In rejecting out-of-hand the Victoria formula and its veto for Quebec, you chose instead to accept "opting-out," declaring that this formula "ensured the legal equality of all provinces" and, for this very reason, was "clearly preferable, for all Canadians, to the formula proposed by the federal government"

Similarly, when Quebec appeared in 1981 before the Supreme Court in company with the other dissenting provinces and sought to have the proposals for constitutional reform submitted by the Parliament of Canada declared unconstitutional, at no point did you claim a veto for Quebec or that Quebec's participation was indispensable to any consensus to amend the Constitution

To keep intact a common front to which Quebec was totally committed, Quebec made itself into a province like the others, while, by an extraordinary paradox, it was the federal government which defended to the very end the principle that Quebec should have a right of veto over constitutional amendments.

Faced with this common front of eight provinces of which you were part, and faced too with the Supreme Court's decision of September 1981, the federal government and the two provinces which supported it had to give way before the notion of the equality of the provinces, and stopped insisting on the constitutional veto for Quebec which, for our part, we had always sought. As I have recently stated, if Quebec did not obtain a right of veto, that is because the Government of Quebec did not want one. Think of the strong support there would have been if the Government of Quebec had joined with Ontario, New Brunswick and the federal government in favour of an amending formula which would have given Quebec a veto. But you chose otherwise.

Although forced to accept, in the November 1981 agreement, an amending formula which was far from its preferred option, the federal government was nonetheless the one that arranged to modify the formula in order to take account of the interests of Quebecers. In fact, with the support of other provinces, we included a provision in the Constitution which guarantees reasonable compensation to any province which dissents from an amendment transferring power to the Canadian Parliament in the area of education and culture.

Furthermore, as regards the language of education, I have offered, publicly, to re-word section 23 if this should be necessary to arrive at a Canada clause acceptable to the Government of Quebec.

This offer still holds, as does my suggestion to you that we should unite in our efforts to return again to the right of veto which the federal government and all the other provinces were prepared to recognize for Quebec in Victoria in 1971.

I think it is reasonable, however, to ask you the following two questions:

First, will Quebec agree to participate in good faith in the current constitutional process? The veto question obviously cannot be settled by the federal and Quebec governments alone. We must discuss this matter with our colleagues of the other provinces if we really want to achieve a new amending formula according to the procedures which are now part of our country's constitution.

Second, in return for the veto, or its equivalent, is the Quebec government prepared to give formal acceptance to the Constitution Act, 1982? It would be unthinkable for the federal government and the governments of the other provinces to devote a great deal of time and effort to the search for an amending formula capable of meeting the needs of Quebecers, only to discover afterwards that the Government of Quebec still found other excuses for not accepting the new Constitution.

If, however, you accept these two reasonable conditions, I am fully prepared to explore with you and our colleagues all the available options which could give better protection to the legitimate interests of Quebecers as far as future amendments to the Canadian constitution are concerned.

As far as opting out is concerned, you are of course aware that, as I mentioned above, we have already included this concept in the Constitution by providing reasonable compensation in the fields of education and culture. I must tell you frankly, however, that it does not seem to me at this point either necessary or desirable to extend this concept to other fields. To go further would be to encourage the gradual balkanization of the country and thereby put its future in doubt.

As for the Canada clause provided in section 23 of the Canadian Charter of Rights and Freedoms, your government stated that it was willing to accept such a provision at the meetings of provincial premiers held in St. Andrews in 1977, and in Montreal in 1978, provided that the other provinces agreed, on a reciprocal basis, to guarantee the same rights to Francophones outside Quebec. You even inserted this principle of reciprocity in section 86 of Bill 101. Now that the other provinces have all adopted the Canada clause, it is incumbent on your government to respect its commitment, all the more so since this clause, like the Charter itself, enjoys the support of the vast majority of Quebecers, and since we are ready to re-word it if necessary to make it more acceptable to the Government of Quebec. Besides, as you know, our fellow Quebecers are interested not only in the development of the French language in Quebec, but also in the broadening of language rights of Francophones wherever they happen to live in Canada.

Finally, I would remind you that in your letter of August 19, you informed me that the Government of Quebec was waiting to consult with the Aboriginal communities before "engaging in a constitutional process concerning them." I hope that concern for Quebec's rights, which are already well protected and which we can strengthen in future, will not prevent us from rendering justice to our Aboriginal peoples, who have greater need than anyone to see their rights better defined and protected in the Canadian constitution.

Yours sincerely,

Pierre Elliott Trudeau