

CONFIDENTIAL

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MEMORANDUM FOR MR. KIRBY

Quebec and the Constitution:
Refuting the P.Q.'s Arguments

Premier Lévesque's government has put forward three main reasons for opposing the revised constitutional resolution:

1. The revised amending formula does not provide fiscal compensation when a province opts out of an amendment;
2. Language rights will either be imposed or else there will be a form of "chantage";
3. Mobility rights will restrict the authority of the National Assembly.

As a consequence of Quebec's refusal to accept the broad agreement signed by nine Premiers and the Prime Minister, a fourth all-embracing argument with populist appeal has been advanced to convince Quebecers that action should not take place: once again, Quebec has been isolated.

The first argument is relatively easy to deal with: the federal government provided fiscal compensation when Quebec opted out of shared-cost programmes in 1965 even though there was no constitutional obligation to do so. The government of Canada would be willing to do so again, when appropriate, in the event that Quebec opts out of constitutional amendments. But each case must be judged on its own merits: the government of Canada cannot be locked into a rigid requirement in the abstract without knowing what the nature of future amendments will be. (Examples of specific cases where fiscal compensation might be inappropriate have already been provided to the Prime Minister.)

The second argument may be relatively easy to deal with since the federal government has offered to discuss it with the Quebec government and since the provincial Liberals support the principle of minority language education rights. If Premier Lévesque refuses to discuss, he can be accused of bad faith. If he refuses to accept a reasonable proposal, the argument can be made that it is not the Charter (i.e., language rights) that he opposes, but rather the country the Charter reflects. However, this may be more difficult to deal with if, in the absence of discussions or with the failure of discussions with Quebec, the government decides to impose a hard-line solution. Options for handling education rights are assessed in a separate memorandum on Quebec and the Constitutional Agreement.

On mobility rights, one may wish to emphasize the positive benefits for Quebecers by producing statistics to indicate that while unemployment is high in Quebec, Quebecers have been able to gain a livelihood elsewhere in Canada and that Quebec will still be able to adopt positive action programmes in Quebec as long as unemployment is above the national average. One may also wish to link the positive benefits for Quebecers to minority language education rights (e.g., Quebecers who go to Alberta for employment will not lose their right to have their children educated in French).

On the broad "all-embracing" argument, one can reply that if Quebec is "isolated", it is because the Péquiste government wishes to give this impression: it serves the long-term goals of the P.Q. But Quebec is not isolated: it is the Parti québécois government which is isolated. The constitutional resolution enhances the position of Quebec and of the French language and culture in Canada:

- Quebec's powers cannot in future be diminished without the consent of the Assemblée nationale;
- The broad provisions of the Official Languages Act will be constitutionally entrenched and not be subject to change without the consent of Quebec. At long last, the concept - and the fact - of dualism will be entrenched and highlighted in the Constitution of Canada;
- Francophones outside Quebec and Quebecers moving to any other province will, at long last, have the constitutional right to be educated in their own language. The

unfortunate reversals that began with the Manitoba schools crisis of 1890 will now be a thing of the past, incapable of being repeated;

- One province - New Brunswick - has agreed to entrench the full equality of English and French: the sad saga of the expulsion of the Acadians has been reversed;
- The composition of the Supreme Court (which requires that one third of the Justices be from the Quebec Bar) will be entrenched and cannot be changed without Quebec's consent. The Supreme Court plays a vital part in the interpretation of our Constitution. Quebec, and Quebec alone among all the provinces, is constitutionally assured of representation on the Court;
- the linguistic and cultural duality of Canada, then, will be reflected in our Constitution in three ways:
 - o entrenched status of French and English in federal jurisdiction for all of Canada;
 - o minority language education rights entrenched for all provinces (if Quebec agrees?);
 - o entrenched dualism in representation on the Supreme Court.

In combatting the position of the Parti québécois, the following points may be important:

1. The way in which minority language education rights is handled for Quebec must be acceptable to the Quebec Liberal Party so that one can argue that both the Official Opposition in Quebec and Quebecers in Parliament are satisfied (i.e., it is the Parti québécois and not "Quebec" which rejects the rights).

2. It is the Parti québécois and not the government of Canada which rejected a general veto over constitutional amendments for Quebec although a veto for Quebec is retained for changes in the status of English and French in federal jurisdiction and for changes in the composition of the Supreme Court. The original resolution proposed by the government of Canada kept open the possibility of a broader protection for Quebec in the amending process.
3. If there is an appearance of Quebec being isolated, it is because the Parti québécois wishes to give this appearance: the Parti québécois will not agree to any form of constitutional resolution that affirms a Canadian community of values. The alleged isolation of Quebec is another manoeuvre by the Parti québécois in its quest for separation.

In the coming debate, we must pay particular attention to vocabulary. At the conference, Premier Lévesque repeatedly referred to the Prime Minister as "Monsieur le Premier ministre fédéral". "Fédéral" at present has a rather pejorative connotation in Quebec (and perhaps in Western Canada). We should refer, in replying to the péquistes, to the national government or the government of Canada and to the Prime Minister of Canada, to national objectives and to the Canadian community of values. We should also refer to the péquiste government or the Parti québécois government and make it clear that there is a difference between "Quebec" and the best interests of Quebec, on the one hand, and the separatist Parti québécois on the other.

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