

QUEBECERS

OUR WAY OF BEING CANADIAN

Policy on Québec Affirmation
and Canadian Relations

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by consulting its website: www.saic.gouv.qc.ca.

Direction des communications
Ministère du Conseil exécutif
1^{er} étage, secteur 400
875, Grande Allée Est
Québec (Québec) G1R 4Y8

Telephone: 418 643-2001
Fax: 418 643-3006
Website: www.mce.gouv.qc.ca

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A WORD FROM THE PREMIER



We are the sum of everything we have received from our predecessors: the only predominantly French-speaking state in America, our culture and a civil-law based tradition, but also the talents and strengths of all the people who have chosen to settle in Québec. Our nation is, first and foremost, French-speaking, but it is also Nordic, maritime and creative. It has been enriched by the diversity and historic contribution of the First Nations and the Inuit, and by English-speaking Quebecers.

Quebecers took part in the building of Canada. We have helped shape the country through our values, our resilience, our accents and our worldview. This federation, although still perfectible, has made possible a cohabitation based on solidarity, cooperation and respect for diversity. Canada is part of our inheritance.

Today, a large majority of Quebecers believe that Québec progresses when it is united instead of divided; when it participates instead of withdrawing; and above all, when it builds bridges instead of walls between the partners in the Federation.

Building stronger bridges with our partners, especially the Aboriginal peoples, affirming our national character and its complete expression on the Canadian scene, stating our vision of a 21st century Canada that recognizes both individual and collective identities—these are the objectives of this *Policy on Québec Affirmation and Canadian Relations*.

Our heritage, distinctiveness within the Americas and diversity are a source of pride. We do not need to choose between an allegiance to Québec and a sense of belonging to Canada, since they both define who we are. To affirm one identity or belonging, there is no need to erase, diminish or reject another—in fact, it must be upheld with confidence, openness and optimism.

In this regard, novelist Amin Maalouf wrote that “Each of us should be encouraged to accept his own diversity, to see his identity as the sum of all his various affiliations [...].”

The 150th anniversary of the Federation provides an opportunity for all of us, Canadians of all backgrounds, to improve our understanding, knowledge, and acknowledgement of each other. As Quebecers, we can take our rightful place, in particular as one of the founding peoples of this country, while bringing in our differences, not to divide, but to help bring us closer together, because it enriches all of us.

We are Quebecers, and this is our way of being Canadian.

Philippe Couillard
Premier of Québec

A WORD FROM THE MINISTER



In the words of Robert Bourassa, which remain just as meaningful today, Québec is free to make its own choices and able to shape its own destiny and development. Québec has all the characteristics of, and recognizes itself as, a nation. It is a singular state within Canada. It has, over the last 150 years, experienced significant economic and social progress.

Québec, and Canada, are aware that their diversity gives them a substantial advantage. However, beyond the question of individual diversity, Canada must be able to name the national and collective identities that have always been part of its makeup.

Allegiance to Québec and a sense of belonging to Canada are the foundations for the identity expressed by a large majority of Quebecers. Recognition for Québec's difference as a nation recalls the founding idea of our country, and brings us closer together rather than dividing us.

Promoting a form of federalism that is open to a plurality of ways of belonging increases, rather than dilutes, our strengths. It makes diversity, in all its forms, an advantage. It offers a way to accept the reality of Québec, to renew our relationship with the Aboriginal peoples, and to offer Canada to the world as a model of respectful collaboration.

The process we propose has several components.

First, we must affirm our identity as Quebecers. Québec's specificity is based on French as a common language, on a nation-to-nation relationship with the Aboriginal peoples, on the long-standing and dynamic presence of an English-speaking community that has contributed to Québec's advancement and possesses recognized rights, and on diversity, as immigrant communities have become part of Québec's historical narrative through interculturalism.

Next, we must reiterate our sense of belonging to Canada and ensure our continuing presence on the Canadian stage. We must make our voice heard, to ensure that we are better understood.

Québec's desire to play a more dynamic role in Canada will become apparent, first, in Québec government actions. The Government of Québec intends to ensure a stronger presence on the Canadian stage by using the structural and substantive means at its disposal. We will take our seat at every table, and seek new tables where we can participate. We will also introduce new tools to better fill the space of Canadian relations.

We hope that Quebecers, and other Canadians, will begin to realize the strength of the links forged since the birth of the Canadian Federation, and that connections between individual citizens will multiply. The ties binding Quebecers to other Canadians are not just governmental or institutional—they also connect individuals and civil society, forming a foundation for a genuine dialogue about the future of our country.

In addition, we clearly announce our goal of breaking down the taboo surrounding discussions about our future relations within Canada. We must resume the discussion about the future of the Federation, including its constitutional aspects. In contrast to past attempts, we want to discuss, exchange and seek greater mutual understanding before considering any constitutional talks. Although it is clear that a constitutional guarantee in certain areas is a must, experience has shown that cooperation does not need to be based solely on constitutional negotiations.

Last, we want to agree on actual ways to strengthen our relationship. These include asymmetry, which must be seen in its true meaning as a way to encourage participation rather than to withdraw from the debate. By ensuring that Québec's specific characteristics are respected, differential treatment becomes a way to ensure equal treatment for all the provinces. Cooperation will encourage flexibility, not the imposition of a single model.

Québec calls on all citizens and federative partners to begin a new dialogue. We have received, as our inheritance, a country that is viewed with envy by the entire world, and that provided a fertile ground for our nation. The progress that we have made together, in Québec and in Canada, can only encourage us to define common goals. After 150 years within Canada, Quebecers know that for their children's future, hope resides in our shared willingness to better understand each other in order to better know and better acknowledge one another.

We are Quebecers, and this is our way of being Canadian.

Jean-Marc Fournier,
Minister responsible for Canadian Relations
and the Canadian Francophonie

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INTRODUCTION

Since 1867, Québec has participated in the Canadian political project while continuing to affirm its unique identity. The original vision for the Federation involved uniting the strengths of a small population, scattered over a wide area, within a political system that would take into account the differences between its component groups. Today, Québec continues to affirm its unique identity and its determination to take its rightful place within Canada.

Like other Canadians, Quebecers have experienced considerable economic and social progress since the birth of the Federation. However, Québec now faces challenges as great as any that have marked its history. The question of Québec's place within Canada has been, and still is, an issue. It constitutes a significant aspect of our Canadian relations.

As the only predominantly French-speaking federated state in North America, Québec has all the characteristics of, and recognizes itself as, a nation. Because of its minority situation within Canada, it is particularly concerned about intergovernmental issues that may have significant consequences for its continuity. For Québec, Canadian governmental relations include a significant identity-related dimension. Québec's distinct character is apparent in particular in its language, its civil law tradition, and its institutions. This has led the various governments that have succeeded one another at the helm of the Québec state, whatever their party affiliation, to consistently and tenaciously affirm Québec's identity and demand respect for its autonomy. They have also persevered in the goal of allowing Quebecers to achieve their specific aspirations.

On the occasion of the 150th anniversary of the Canadian Federation, the government is presenting its *Policy on Québec Affirmation and Canadian Relations*. The policy defines and names Québec's plural and inclusive national identity. It outlines the government's vision for Québec within Canada, and ways to implement this vision. First, the document provides an overview of the history of Québec's political and constitutional demands. Next, it reviews these demands in light of the current political and legal context. Last, it develops a contemporary vision of Québec's place within Canada.

QUEBECERS, OUR WAY OF BEING CANADIAN

The starting point for the implementation of this policy will be a statement, along with an affirmation process to clearly reiterate who we are as Quebecers and our intention of taking our rightful place in Canada, with our differences. The 150th anniversary of the Federation provides an opportunity to resume a meaningful dialogue on the place of the country's different national elements, on the role and composition of its institutions, on the principles that guide intergovernmental relations—in short, on the evolution of federalism. This dialogue must include not only governments, but also civil society, the Aboriginal peoples and French-speakers in Canada.

This policy of proactive Canadian governmental relations is intended to defend Québec's interests and jurisdiction. In addition, it aims to make Québec better known to Canadian civil society and to increase its outreach throughout Canada, particularly in the economic, social and cultural spheres. To achieve these goals, the Government of Québec intends to use all the forums and means at its disposal. In concrete terms, Québec's goal of playing a more dynamic role within Canada will be reflected in changes to the way in which Canadian relations are conducted within the Québec government administration.

Québec remains free to make its own choices and intends to assume its own identity. It also wants to affirm both its identity as a nation and its attachment to Canada. Québec will continue to participate in building the Canadian political project, while resolutely making its own specific contribution. With a strong national identity that is deeply felt, and wishing to have this identity duly recognized, Quebecers choose to build their future with other Canadians. We are Quebecers, and this is our way of being Canadian.

The background features a dark blue central area with rounded corners, resembling a speech bubble. To the left, there is a vertical gradient from teal to light green. To the right, there is a vertical gradient from pink to purple. The text is centered in the dark blue area.

1. HISTORICAL BACKGROUND

Québec and its institutions have roots that go deep into the history of America, marked by the age-old presence of the Aboriginal peoples and by French and British colonization. To assess Québec's place in Canada, it is important to review the major milestones of this history, from the first encounters between peoples to the constitutional negotiations before and after the patriation of Canada's Constitution.

This historical overview does not pretend to be exhaustive. It is designed to highlight, in a concise form, the main historical events that facilitate the understanding of the national reality of Québec and its relations with Canada.

1.1 A MEETING OF PEOPLES

When the Europeans discovered the "New World," the First Nations had already been living there for millennia. As the explorers and first French pioneers settled on the banks of the St. Lawrence in the 16th and 17th centuries, they came into contact with the Aboriginal groups living on this land in organized societies. In the 18th century, when explorers ventured as far as the western and northern edges of the continent, they found Aboriginal peoples already present in all sectors, including the Arctic, where they forged links with the Inuit.¹ *"Chaque nation autochtone possède sa langue, ses croyances et sa culture. Grâce à leur connaissance du territoire, les Autochtones vont aider les Européens à s'adapter à la rigueur du climat et à tirer profit de la flore et de la faune."*² [translation: Each Aboriginal nation had its own language, beliefs, and culture. Drawing on their knowledge of the land, the Aboriginal peoples helped the Europeans adapt to the harsh climate and make use of the flora and fauna.]

"Each Aboriginal nation had its own language, beliefs, and culture. Drawing on their knowledge of the land, the Aboriginal peoples helped the Europeans adapt to the harsh climate and make use of the flora and fauna."

The Aboriginal nations would prove vital to ambitious exploration expeditions. Interactions would lead to the sharing of respective know-how. In the Canadian West, new Aboriginal communities, the Métis, emerged from the close relationship established between Europeans and First Nations. Military and trade relationships were quickly forged across the land and would be a key factor in slowly changing Aboriginal peoples' way of life. Despite these major changes, the Aboriginal nations would retain extensive segments of their culture, traditions, and identity.

Marcel Trudel states that Jacques Cartier was "[...] *au point de départ de l'occupation française des trois quarts d'un continent*",³ [translation: at the starting point of French occupation of three quarters of a continent] but it was Samuel de Champlain's travels between 1603 and 1635 that marked the real beginning of French America, especially with the founding of Québec, capital of New France, on July 3, 1608.⁴

In 1627, Cardinal de Richelieu founded the Compagnie des Cent-Associés to promote the settlement of New France. It held a monopoly on the fur trade in particular. The act establishing the Compagnie also vested it with legislative, judicial, and administrative powers over the territory of New France.

In 1634, the town of Trois-Rivières was founded, followed by Montréal in 1642. Along with Québec City, these settlements formed the backbone of New France. Between 1641 and 1664, the population of New France grew from 300 to 2,500.⁵

The *Édit de création du Conseil souverain* issued by King Louis XIV in 1663 established a royal government in New France modelled on the provincial governments in France. Under the edict, the status of New France changed from a seigniorship to a royal province, consisting of a vast territory extending from Labrador to the Gulf of Mexico. Up to the British Conquest, the Sovereign Council played a key administrative role, specifically by regulating trade and public order.⁶ It also oversaw the recording of the King's edicts and orders so they could be disseminated throughout the colony.

Following the Conquest, New France became part of the British Empire. A few years later, the British Crown promulgated the *Royal Proclamation* of 1763, instituting a British constitutional system to govern the territory and repealing the French laws in force.⁷

The ceded territory's laws, administration and relations with Aboriginal peoples were determined by the *Royal Proclamation*, which consolidated the treaty negotiation approach previously used by Europeans in their relations with First Nations.⁸ It provided the basis for negotiating historic treaties establishing the relationship between the British Crown and Aboriginal peoples in Upper Canada and the Western Prairies. Today, the *Royal Proclamation* is still considered an indispensable reference by many First Nations.

1.2 EMERGENCE OF THE CANADIAN PLURINATIONAL PROJECT

Most settlers were French Canadians, and there was a pressing need to adapt the institutions of the new colony, where French law was still being applied in daily life. In 1774, the British Parliament passed the *Quebec Act*, which responded to the main demands of the French-Canadian people and granted them the right to retain their institutions and French civil law. It also guaranteed freedom to practise the Catholic faith. The *Quebec Act* established the cultural coexistence of the English and French colonists.⁹ This was the first constitutional document that recognized the distinct nature of Québec society.¹⁰

A few years later, the *Constitutional Act of 1791* created two provinces within the colony, Lower Canada and Upper Canada. The new political system included certain federal elements and was intended to allow the French Canadian and English Canadian populations to “*développer chacune selon ses aspirations et de se gouverner par des lois appropriées à son caractère.*”¹¹ [translation: each develop in accordance with its own aspirations and govern itself through laws suited to its character.] The Act maintained the gains in civil law and religious freedom achieved by French Canadians. In addition, for the first time, the Constitution created elected assemblies in both provinces.

The *Quebec Act* established the cultural coexistence of the English and French colonists. This was the first constitutional document that recognized the distinct nature of Québec society.

The *Act of Union* passed in 1840 after the rebellions of 1837-1838 and the Durham Report that followed, merged the provinces of Upper and Lower Canada, returning to the concept of a single colony. Yet just a few years later, the Joint Premiers Louis-Hippolyte LaFontaine and Robert Baldwin cut short this attempt at legislative union and managed to impose a double majority system to ensure respect for the aspirations of French-speakers and English-speakers.

[S]ous le régime d'Union, un régime qui comportait plusieurs pratiques fédératives a émergé au Canada-Uni. La solution préconisée par Londres afin de mettre un terme à la dualité culturelle qui s'exprimait au sein de ses colonies, soit l'assimilation du peuple canadien-français, a progressivement été transformée à l'interne en un régime de cohabitation dans lequel chacune des deux sections pouvait, dans une certaine mesure, administrer les matières liées à sa culture propre.¹²

[translation: Federative practices emerged under the Union regime. The solution advocated by London to end the cultural duality prevailing in its colonies, namely the assimilation of the French Canadian people, was gradually transformed in Canada into a system of coexistence in which each of the two sections had some freedom to administer matters related to its own culture.]

The foundations of federalism were laid well before the Federation itself emerged 150 years ago.

This coexistence and the challenges of legislative union presaged the need for the French Canadian nation to have its own state institutions. In Canada West, there was equal support for obtaining institutions distinct from

those in Canada East, as reformers had long pressed for greater local autonomy.¹³ The idea of federalism developed in this context, motivated as well by serious economic difficulties in the colonies and the growing threat of annexation by the United States. In short, the foundations for federalism were laid well before the Federation itself emerged 150 years ago.

During this period, pre-Confederation political institutions also grew at a dazzling rate, which constitutionalists Jacques-Yvan Morin and José Woehrling summarize as follows:

Aux acquis du Régime français, essentiellement l'identité nationale (avant tout linguistique et religieuse) et le droit civil, sont venus s'ajouter, de 1791 à 1838, l'âpre expérience de la souveraineté populaire, la création d'un droit parlementaire québécois, le souci des libertés publiques et des droits fondamentaux des personnes devant la justice (dans les limites dictées au départ par le régime colonial). Acquis essentiels sur lesquels viendront se greffer, sous l'Union, la responsabilité ministérielle, l'indépendance de la fonction judiciaire et le contrôle de la constitutionnalité des lois par les tribunaux. Certes, tous ces principes ne se sont pas imposés d'un seul coup : ils connaissent une sorte de croissance organique qui les impose de fait, tout comme dans le modèle britannique, souvent par le jeu des précédents et des conventions, arrachés parfois de haute lutte, qui viennent compléter les lois fondamentales successives de la colonie.¹⁴

[translation: To the gains made under the French regime—essentially national identity (primarily linguistic and religious) and civil law—one must add from 1791 to 1838, the bitter experience of popular sovereignty, the creation of Québec's parliamentary law, and concern for public freedoms and for people's basic rights before the courts (within the limits initially dictated by the colonial system). To these key gains were appended, under the Union, ministerial responsibility, an independent judiciary, and determination by the courts of the constitutionality of legislation. All these principles obviously were not instituted at the same time: they grew organically through practice, as in the British model, often through the interaction of precedents and conventions, sometimes acquired through bitter struggle, which rounded out the colony's successive basic laws.]

The agreement that led to the *British North America Act* in 1867 (renamed the *Constitution Act, 1867* in 1982) was negotiated in 1864 at two conferences held first in Charlottetown in September and secondly Québec City in October, attended by delegates from the Maritimes and the Province of Canada. The contribution made by French Canadians, especially George-Étienne Cartier, would be key in the choice of federalism, viewed as the best model for the harmonious coexistence of the two national communities.¹⁵ In this regard, Cartier stated:

*Telle est [...] la signification que l'on doit attacher à cette constitution. On y voit la reconnaissance de la nationalité canadienne-française. Comme nationalité distincte et séparée, nous formons un État dans l'État, avec la pleine jouissance de nos droits, la reconnaissance formelle de notre indépendance nationale.*¹⁶

[translation: This is [...] the significance that must be attached to this constitution. It contains recognition of the French Canadian nationality. As a distinct and separate nationality, we form a state within the state, with full enjoyment of our rights and formal recognition of our national independence.]

Initially in favour of a legislative union, John A. Macdonald subsequently realized that this political structure was inapplicable in Canada:

[W]e found that such a system was impracticable. In the first place, it would not meet the assent of the people of Lower Canada, because they felt that in their peculiar position—being in a minority, with a different language, nationality and religion from the majority—in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of Lower Canada [...] would not be received with favor by her people.¹⁷

Ongoing discussions between 1864 and 1867 resulted in a federative compromise that gave Québec the political and legal autonomy it needed to safeguard its language, civil-law tradition and religion. Canada was one of the first modern states, if not the first, to devise a form of federalism that had, as one of its primary goals, the accommodation of different national, cultural and linguistic identities, rather than just territorial identities.¹⁸ In this it differed fundamentally from the United States:

Le Canada est né du refus du melting pot américain et il est fondé depuis ses origines sur la reconnaissance du droit à la différence des communautés qui lui ont donné naissance. La reconnaissance des droits ancestraux des peuples autochtones remonte, en effet, à la Proclamation royale de 1763. Celle du caractère distinct de la société québécoise remonte à l'Acte de Québec de 1774.¹⁹

[translation: Canada was born out of the rejection of the American melting pot and from its origins, was founded on the recognition of the right to difference of its founding communities. Recognition of the Aboriginal rights of the indigenous peoples dates back to the Royal Proclamation of 1763. That of the distinct nature of Québec society goes back to the Quebec Act, 1774.]

The *Constitution Act, 1867* provided the tools needed to develop and build what would become the Québec state. The provinces retained exclusive jurisdiction over property and civil rights, the administration of justice, the solemnization of marriage and, more fundamentally, education. They also owned the natural resources within their territory.²⁰ Finally, with the gains made by the colonies in 1865 under the *Colonial Laws Validity Act*,²¹ the provinces retained the power to amend their own provincial constitution.²²

Canada was one of the first modern states to devise a form of federalism that had, as one of its primary goals, the accomodation of national, cultural and linguistic identities.

Although it included strong centralizing factors and maintained an imperial approach,²³ the 1867 Constitution met the main demands of the representatives of Lower Canada. It permitted certain asymmetries,²⁴ especially in matters of language and private law, which attest to the acceptance of a plurinational reality in the new federal framework. In short, as pointed out by Jean-Charles Bonenfant, this was an imperfect compromise emerging from a specific context, but which still constitutes "*l'acceptation définitive des Canadiens français*" [translation: the definitive acceptance of French Canadians] consistent with the *Quebec Act*:

Même si les Pères de la Confédération n'ont pas très bien compris ce qu'aurait dû être le véritable fédéralisme, même s'ils furent plutôt favorables à un régime fortement centralisé, ils ont eu vraiment l'intention d'assurer la survivance des Canadiens français et ils ont adopté les moyens qui, à l'époque, leur semblèrent les meilleurs pour la réaliser.²⁵

[translation: Although the Fathers of Confederation did not clearly understand what should have constituted true federalism, and even though they preferred a highly centralized system, they genuinely intended to ensure the survival of French Canadians and adopted the means that, at the time, they deemed best for this purpose.]

Since that time, Québec has tenaciously defended and promoted the French language as the central component of its identity. It has also consistently voiced its determination to fully exercise its jurisdictional powers without interference. This is fundamental, since only the Québec state is capable of embodying what Simon Langlois named an inclusive society²⁶ in which the Québec people can live as the majority. The powers exercised by Québec have become closely linked with its identity. Thus, the defence of its powers has always been guided by the need to guarantee the Québec nation a space in which its majority can flourish in French.

1.3 EVOLUTION OF FEDERATIVE AND IDENTITY-BASED RELATIONSHIPS

Aboriginal Peoples

During the constitutional negotiations that led to the *Constitution Act* in 1867, the Aboriginal peoples were not represented, and their participation was not even considered.

When the Fathers of Confederation came together in 1864 in Charlottetown and then again, a year later in Quebec, to lay out the foundation for this country, our people were not present. We were left out, despite the early treaty-making and the Royal Proclamation of 1763 [...].²⁷

The Royal Commission on Aboriginal Peoples (Erasmus-Dussault Commission) also pointed out the absence of Aboriginal peoples at the discussions leading to the 1867 compromise. It added that the constitutional agreement in fact imposed new relationships on Aboriginal peoples and that for John A. Macdonald, Canada's goal was to "[...] do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion."²⁸ In the Commission's view, this goal "[...] placed Canada in the vanguard of the empire-wide task of carrying the 'white man's burden', which was at one and the same time the duty of 'civilizing' Indigenous peoples, be they Maori, Aborigine or Zulu."²⁹

Aboriginal peoples were considered solely from the aspect of state control over them to ensure Canada's westward development and expansion. The only reference to Aboriginal peoples in the *Constitution Act, 1867* appeared in section 91, which stipulates that "Indians, and Lands reserved for the Indians" fall under the jurisdiction of the federal Parliament.

The second half of the 19th century marks the start of a dark period in Aboriginal history. No longer viewed as strategic allies following the end of the colonial wars, nor as economic allies because of a substantial decline in the fur trade, they were instead treated as a population that, deprived of its autonomy, needed to be supervised.

In 1876, the federal Parliament passed the *Indian Act*, which reduced the status of First Nations members, placing them under federal government trusteeship, limiting the exercise of their civil and political rights, imposing a local form of government foreign to their traditions and customary law, and focusing on greater long-term assimilation.³⁰ The residential schools episode that followed would be another of the so-called “civilizing” actions that devastated Aboriginal families and children.³¹

The two centuries of assimilation that followed the Royal Proclamation of 1763 are seen in a new light today, and their underlying imperialism, colonialism and paternalism are condemned. This major shift in perspective began through jurisprudence. Starting in the 1970s, the courts, specifically in light of their reading of the Royal Proclamation of 1763, defined the existence of Aboriginal rights. Recognition by the Supreme Court of Canada of the existence of territorial rights³² in 1973 gave rise to the renewal of treaty negotiations in Canada and to the adoption of a first comprehensive land claims settlement process. It was finally through the *Constitution Act, 1982*, in section 35, that the existing Aboriginal and treaty rights of Canada’s Aboriginal peoples were officially recognized.

The Birth of Intergovernmental Relations in Canada

As a minority nation within Canada, Québec managed over time to capitalize on the asymmetries and powers granted to it by the *Constitution Act, 1867*, in a North American environment where the assimilating force of the United States would inevitably remain very strong. However, several characteristics of this new federal constitution posed a problem from Québec’s viewpoint because they were likely to result in a greater centralization of power, to the detriment of the federal spirit. Prime Minister John A. Macdonald, who initially would have preferred a legislative union to a federation, governed in line with his centralizing ideas. The federal government specifically had the power to disallow and to issue reservation over legislation passed by the provinces, and this was exercised frequently in the first decade of the Federation. Very soon after the passage of the *Constitution Act, 1867*, Québec objected to the centralizing approach of the federal government in intergovernmental forums.

Québec was by no means the only province to denounce the centralizing tendencies of the new federation. Other provinces, led by Ontario, lobbied effectively to ensure that their exclusive powers were respected.³³ The interprovincial conference of 1887 was a starting point for provincial assertions. The provinces' main demands included abolition of the power of disallowance, oversight of the declaratory power, and Senate reform.³⁴ The provinces also opted for a court challenge of infringements by the federal Parliament. The decisions of the Judicial Committee of the Privy Council clearly favoured the provinces.³⁵

After the First World War, intergovernmental discussions focused on the idea of granting Canada full independence from the British Empire. The English colonies that took part in the war effort were now demanding more than just autonomy. They wanted independence and international recognition. In 1926, the Imperial Conference gave political recognition to these demands. In 1931, the *Statute of Westminster* provided a legal resolution to the situation, although the issue of amending the Constitution still had to be resolved for Canada. The Judicial Committee of the Privy Council in London remained the highest authority in Canada's judicial system.

It is clear that, in the years that followed 1867, the proponents of a centralized federation were unable to implement their vision.³⁶ It must be noted that the Canadian Federation underwent rapid expansion during this period, creating five provinces (Manitoba, British Columbia, Prince Edward Island, Alberta, and Saskatchewan) and two federal territories (Northwest Territories and Yukon). In addition, dualism and the theory of the compact between the two founding peoples surfaced increasingly in the discourse of Québec's political leaders.³⁷

In English Canada, the debates surrounding the meaning to be given to the federal compromise also drove political thought during the first half of the century following the *Constitution Act, 1867*. Oliver Mowat, a defender of provincial autonomy, described the circumstances surrounding the advent of the Federation, especially the meaning of the federative compromise for French Canadians:

[...] [I]ls jouissaient d'une disposition selon laquelle toutes les affaires locales seraient sous leur responsabilité, [...] que l'élaboration de leurs lois et l'affectation de leurs recettes publiques seraient sous leur gouverne, que leurs écoles, par rapport auxquelles ils étaient si inquiets, ne fassent jamais l'objet de modifications sans l'accord d'une majorité de leurs propres représentants.³⁸

[translation: [...] [T]hey had a provision by which all local matters would be under their responsibility, [...] that the drafting of their legislation and allocation of their public revenue would be under their governance, that their schools, about which they were so concerned, would never be the subject of amendments without the consent of a majority of their own representatives.]

However, the degree of support for the compact theory gradually declined, as this notion was perceived in some circles as a hindrance to the changes deemed necessary to adapt the functioning of Canadian federalism to the realities of the mid-20th century. First, the effects of the Great Depression of the 1930s led to calls for more vigorous intervention by the federal state in the economy, and the provinces were deemed incapable of taking action even in the areas under their jurisdiction. This is reflected in the report tabled in 1940 by the Royal Commission on Dominion-Provincial Relations (Rowell-Sirois Commission), which specifically recommended the transfer of taxation functions and powers to the federal government, while also assigning to it responsibility for social programs (unemployment insurance, pensions) and management of an equalization system, in order to give provincial governments sufficient revenue to deliver public services at a comparable level of quality.

In line with this report, in 1940, the federal Parliament sought and accepted, with the consent of the provinces, exclusive jurisdiction to legislate on unemployment insurance. This jurisdiction had previously been vested in the provinces, but the realities of the Great Depression and the war made them financially unable to discharge this responsibility.

However, a centralized approach could not be reconciled with the defence of provincial autonomy which relied, among other things, on the idea of a compact.³⁹ Moreover, one of the logical conclusions of the compact theory—that each party had to consent to any constitutional change—was also deemed increasingly impractical given that after the *Statute of Westminster* was passed in 1931, Canada had been unable to agree on a formula for amending the constitution, unlike the other dominions of the British Empire.⁴⁰

In Québec, the idea that Canada resulted from a federative compromise designed, in particular, to preserve the specificity of the Québec nation was still current, while the rest of Canada gradually moved in another direction.

Given these circumstances, many authors, such as Norman Rogers, then Frank R. Scott and Donald Creighton, portrayed Canada not as the result of a compact between free and autonomous provinces, but rather as a mere creation of the imperial Parliament,⁴¹ a concept that gradually became the dominant paradigm of Canadian political thought, except in Québec, where the idea of the compact persisted. In Québec, the idea that Canada resulted from a federative compromise designed, in particular, to preserve the specificity of the Québec nation was still current, while the rest of Canada gradually moved in another direction. These competing visions of what Canada ought to be contributed, to a large degree, to the growing gap between Québec and the rest of Canada. This development can be viewed as a fault line that has, ever since, blocked the establishment of a shared vision of what Canada could and should be. This fault line, which persists to this day, is the source of much misunderstanding and ultimately of a loss of trust.

In the 1940s and 1950s, the federal government attempted to expand its powers and increase its revenue at the expense of the provinces, both through taxation and the development of the welfare state. The Second World War and the postwar period triggered changes in the role of the two orders of government. The federal government developed economic policies to support the war effort. To this end, the provincial governments ceded personal and corporate income tax to the federal government for the duration of the war, in exchange for compensation.⁴² In turn, the federal government agreed to reduce federal taxes after the war to restore this tax field to the provinces.⁴³

The end of the war and the need to reconvert the economy raised concerns over a possible return to the economic and social conditions of the 1930s. To counter the spectre of a possible economic depression, a series of reports issued by the committee on postwar reconstruction proposed a vast reconversion to be led by the federal government: the Curtis report on housing and urban planning, the Heagerty report on health insurance and public health and, most importantly in terms of a substantial review of the role of government, the Marsh report on social security. These reports advocated federal government intervention to stabilize Canada's economy. The postwar period thus saw the emergence of the welfare state and a growing role in social policy for the federal government.

This reconversion allowed the federal government to play a more active role in areas under provincial jurisdiction, and the federative partners began to debate a readjustment in the division of powers to accommodate these changes. The first ministers gathered at the Dominion-Provincial Conference on Reconstruction in August 1945. Aside from tax arrangements, the discussions focused on social security, agriculture, labour, and housing.⁴⁴

The idea gradually emerged that the federal government had to act to reduce regional economic disparities and share the wealth produced throughout the country more equitably. The equalization program instituted in 1957 reflected this new impetus.

A final Canadian province, Newfoundland, joined the Federation in 1949. That same year, the abolition of appeal of civil cases to the Judicial Committee of the Privy Council entrenched the Supreme Court of Canada's role as the highest Canadian court of appeal.

In 1954, the Government of Québec introduced a Québec income tax on individual earnings, and set up the province's first *ministère du Revenu*. Thus far, Québec remains the only Canadian province that collects its own income taxes.

In 1956, the report of the Royal Commission of Inquiry on Constitutional Problems,⁴⁵ chaired by Justice Thomas Tremblay and instituted at the initiative of the Maurice Duplessis government, reflected Québec's

determination to affirm a new autonomy. While a standardizing vision of federalism was emerging in Canada, the report reiterated that the federal government was a creation of the provinces and argued that the role of the 1867 political system was to develop a structure in which the English-speaking and French-speaking communities could benefit from federalism. It also advocated greater provincial autonomy, proposing that the provinces take back control of social matters, and recommended a series of measures to be implemented by the Québec legislator in the areas of culture, immigration, health, and education.

Development of the Québec State and the Québec Identity

In Québec, the Quiet Revolution, the affirmation of Québec's identity and the official recognition of the French language contributed to the rise of the state. As part of a Canadian political ensemble that in fact was quite flexible, Québec was able to: "*accéder à un degré élevé de liberté et de prospérité.*"⁴⁶ [translation: access a high degree of freedom and prosperity.] Jocelyn Maclure states, "[...] *le fédéralisme canadien, malgré ses jours sombres et ses imperfections évidentes, s'est montré assez spacieux pour que le Québec y réussisse son projet de construction nationale. Le Québec a utilisé ses champs de compétences constitutionnelles pour bâtir un État fort et un espace démocratique qui lui sont propres.*"⁴⁷ [translation: [...] despite its dark days and obvious imperfections, Canadian

“Despite its dark days and obvious imperfections, Canadian federalism proved to be accommodating enough for Québec to succeed in its nation-building project.”

federalism proved to be accommodating enough for Québec to succeed in its nation-building project. Québec used its areas of constitutional jurisdiction to build a strong state and its own democratic space.] In essence, Québec acquired several tools to ensure its political, economic, and social development within Canada.

During that period and until the present day, this development in Québec has influenced the Québec identity. As Simon Langlois summarises in a seminal text:

Les francophones ne sont plus systématiquement les porteurs d'eau d'autrefois. La réduction des écarts et des différences entre les membres des deux groupes linguistiques s'est effectuée prioritairement par le biais du développement d'institutions parallèles. Voilà l'un des traits originaux de la société canadienne, qui a conduit à l'avènement d'une société distincte au Québec. La « minorité officielle » du Canada ne se limite pas à être en compétition avec la majorité dans les grandes institutions « nationales », comme c'est le cas pour les membres des autres minorités; comme elle est concentrée au Québec, elle a créé ses propres institutions : politiques, scolaires, sociales, culturelles, de communications, mais aussi ses propres institutions économiques.⁴⁸

[translation: Francophones are no longer systematically the drawers of water from times past. The narrowing of the gaps and differences between members of the two language groups occurred mainly through the development of parallel institutions. This is one of the original traits of Canadian society, which led to the advent of a distinct society in Québec. Canada's 'official minority' is not limited to competing with the majority in major 'national' institutions, as is the case for other minorities; since it is concentrated in Québec, it has created its own institutions: political, educational, social, cultural, and communications, as well as its own economic institutions.]

The Significant Growth of the Québec State

During the Quiet Revolution,⁴⁹ Québec society experienced sweeping changes that affected education, the social system, culture, language, and the economy. There was a metamorphosis of the role of the state, now seen as an instrument serving Québec's development. The public administration became professional and gradually replaced the social and educational institutions previously managed by religious orders. Several new government departments and institutions were created, while others underwent extensive changes; new management and decision-making mechanisms were instituted. The "Province of Québec" became the "Québec state." Bolstered by the slogan "*Maîtres chez nous*" [translation: Masters in our own house] and the Estates General of French Canada, the name "Quebecer" gradually supplanted "French Canadian."

Strengthening Canadian and International Relations

Starting in the 1960s, the Government of Québec asserted its priorities in the field of intergovernmental relations and in particular, negotiated the right to opt out of certain federal social programs with full financial compensation. Against this backdrop, the government also established the *ministère des Affaires fédérales-provinciales*. Intergovernmental relations intensified under executive federalism focused on cooperation.⁵⁰ Asymmetry became a tool for flexibility to address Québec's aspirations within the Canadian framework. The Government of Québec asserted its right to opt out of certain federal programs—hospital insurance, public health grants, some social assistance and unemployment insurance programs, and the technical training program—and to “receive compensation in the form of tax points and monetary compensation.”⁵¹ This right to opt out with compensation was recognized by the federal government in 1965.⁵²

At the same time, Québec asserted the legitimacy of its international activity. The Gérin-Lajoie doctrine on the international extension of Québec's domestic jurisdiction, the opening of the *Maisons du Québec* in Paris (1961) and London (1962), the founding of the Agence universitaire de la francophonie (1961), whose head office is located at Université de Montréal, as well as the signing of the first international agreements with France, were tangible manifestations of this activity. Québec's decisive role in the emerging international Francophonie as well as the impetus provided by the choice of Montréal to host the 1967 World Exposition and the Olympic Games in 1976 helped boost Québec's presence on the world stage. In 1971, Québec became a Member State of the Agence de coopération culturelle et technique (ACCT), precursor of the Organisation internationale de la Francophonie (OIF).

Acquiring Economic and Financial Levers

French-speaking Quebecers were slowly assuming their own role in the economy, notably through the nationalization of hydro-electricity, which gave Québec industrial momentum. The flexibility of the Canadian framework allowed Quebecers to acquire the main levers for economic development. After creating the Société générale de financement (1962) and nationalizing electricity (1963), the Government of Québec

instituted its own public pension plan in 1965. This vital instrument for achieving prosperity and economic independence for Québec in turn supported the creation of the Caisse de dépôt et placement du Québec (1965). To this day, Québec is the only province in Canada to implement its own public pension plan.

The Official Language of Québec

The transformation of Québec's identity driven by the Quiet Revolution was anchored in particular by recognition for the status of the French language, and more effective protection of French. The defence and flourishing of the French language remain challenges today, given the dominance of English in North America and around the world. The last 40 years have shown, however, that Québec has been able to develop the necessary tools to ensure the vitality of its language.

In 1974, the government led by Robert Bourassa passed the *Official Language Act*,⁵³ also known as Bill 22. This legislation strengthened the status and use of French in Québec. For the first time, it made French the only official language. While ensuring a place for English, it imposed the use of French in education, in public administration and

.....

The defence and flourishing of the French language remain challenges today, given the dominance of English in North America and around the world.

.....

in various segments of the economy, especially signage, corporate names, product labelling and contracts.

In 1977, the *Official Language Act* was repealed by the government of René Lévesque, which adopted the *Charter of the French Language*,⁵⁴ also

known as Bill 101. It reinstated various provisions of Bill 22, extended their scope, and substantially strengthened the status of the French language in Québec.

The Charter solemnly sets out basic language rights. It makes French the official language of the Québec state, the National Assembly, the courts, Québec's public administration, as well as the language of public signage and commercial advertising.⁵⁵ In respect of the language of education, children from the French-speaking majority and immigrant families are required to attend French-language schools.

In the area of immigration, since the late 1970s, Québec has developed its own immigration policies under a succession of special arrangements with the federal government. These are based on explicit recognition of the distinct character of Québec and the resulting authority to take responsibility for selecting and integrating immigrants. As the only province with such arrangements, it can ensure its demographic security and linguistic vitality.

From French Canadians to Quebecers

The development of the Québec state was accompanied by a profound redefinition of Québec's identity, the origins of which can be traced back to the birth of the Federation. The advent of the Federation in 1867 effected a significant transformation in relations between Canada's French-speaking and Acadian communities.⁵⁶ French Canadians living in the new Province of Québec now had institutions that enabled them to develop in a majority setting. A specific new national identity gradually developed, linked to a territory where people could live as part of a French-speaking majority.

Until the beginning of the 20th century, however, the identity of French Canadians in Québec remained indissociable in many respects from that of their French Canadian compatriots scattered across the rest of Canada.

Dans les dernières décennies du XIX^e siècle, et longtemps par la suite, on n'aurait pas pu dissocier la société québécoise de la diaspora francophone en Amérique. Le Québec était situé au centre d'une communauté dispersée pour laquelle il représentait, par ses institutions, une sorte de prototype à reproduire ou tout au moins une garantie de survie.⁵⁷

[translation: In the final decades of the 19th century, and long after, one could not dissociate Québec society from the French-speaking diaspora in North America. Québec was at the centre of a scattered community for which it represented, through its institutions, a prototype of sorts to be replicated, or at least a guarantee of survival.]

The Quiet Revolution marked a second break in this regard and entrenched the identity separation that began in 1867. The unprecedented growth of the Québec state was accompanied by a new perception that it was "*le seul instrument d'émancipation économique, politique et culturelle dont disposaient les Canadiens français en Amérique du Nord, puisqu'il était le seul qu'ils pouvaient prétendre contrôler.*"⁵⁸ [translation: the only instrument for economic, political, and cultural emancipation available to French Canadians in North America, since it was the only one they could claim to control.] At the same time, French Canadians in Québec became Quebecers, "*un nom qui correspond à une nouvelle identité et à de nouveaux projets collectifs.*"⁵⁹ [translation: a name that reflects a new identity and new collective initiatives.] Preservation of the French language played a central and predominant role in the definition of this new identity.

The Quiet Revolution also marginalized the influence of the Catholic church which, through its vast network of parish institutions, maintained a certain reference point for French Canadians and "*assurait une grande unité politique et culturelle.*"⁶⁰ [translation: ensured great political and cultural unity.]

The building of the Québec state from 1867 to the Quiet Revolution involved the emancipation of a people, a majority of whom were French-speaking. This identity construction resulted, however, in the fragmentation of a broader identity, and of a horizon that historically included the idea of a Canadian French-speaking community.

Between 1966 and 1969, in the midst of Québec's transformation, the Estates General of French Canada were held in three sessions that gathered hundreds of delegates from across Canada. The purpose of this ambitious initiative originating in civil society was to consult all French Canadians about their future, especially their constitutional future, in a Canada undergoing fast, sweeping change.

Many observers believed that these sessions finalized the rupture between Quebecers and French-speaking Canada, as the event focused on the needs of the French-speaking majority in Québec, especially the demand for the powers needed to build the modern Québec state. Others viewed the event as a massive gathering testifying to the relevance of Canada's French-speaking community for the country's future.⁶¹

One thing was certain, these sessions marked the breach that opened between Quebecers and French Canadians, “[...] *et chercheront néanmoins à amener les parties à s’expliquer les unes aux autres.*”⁶² [translation: [...] and nevertheless sought to bring the parties to explain themselves to each other.] Although the Estates General shed clear light on a significant fracture, a certain solidarity among Francophones remains.

Essentially, the new identity linked to the Québec state distanced itself from Canada’s other French-speaking and Acadian communities. Since then, the major paradox is that Québec’s links with French Canadians in the rest of the country have weakened in the name of the progress of the French language. The “masters in our own house” movement that largely sought to strengthen the French presence distanced Québec from the French-speaking community in the rest of Canada and weakened the bonds of solidarity between citizens who shared the same interest and same deep aspiration for progress of the French language.

Nevertheless, an acute awareness remained that as the only French-speaking state in North America, Québec had to assume a degree of responsibility for the French-speaking and Acadian communities. When he created the first *ministère des Affaires culturelles*, Premier Jean Lesage said: “*À cause de sa cohésion et de sa force numérique, le Québec doit en quelque sorte se considérer comme la mère-patrie de tous ceux qui, en Amérique du Nord, parlent notre langue.*”⁶³ [translation: Given its cohesiveness and numerical strength, Québec must consider itself, to some extent, the homeland of all those in North America who speak our language.]

In the 1970s, the Government of Québec specifically instituted a program of cooperation with the other French-speaking communities. It also actively promoted the teaching of French throughout Canada. The various initiatives were highly successful and led to the creation of the *Secrétariat permanent des peuples francophones*. In 1985, the Government of Québec unveiled its first policy on Canadian Francophonie. In 2008, the *Centre de la francophonie des Amériques*

was inaugurated, adding a new component to Québec's action in the Francophone sphere. Today, the Québec Policy on the Canadian Francophonie acknowledges the fact that French-speaking and Acadian communities, as well as French-speaking and Francophile immigrants, are key components and players in the defence and promotion of the French fact in Canada.

An acute awareness remained that as the only French-speaking state in North America, Québec had to assume a degree of responsibility for the French-speaking and Acadian communities.

Canada's Francophone Space

The Federation marked a decisive moment in the history of French Canadians. This is largely due to the fact that the founders provided no guarantees for French-speaking Canadians living

outside Québec. Nor did this group have any representatives at the negotiations leading up to the *Constitution Act, 1867*. In addition, the rights of French-speaking minorities were addressed only briefly during these negotiations.⁶⁴ French-speaking Canadians living outside Québec were, in some ways, left to their own fate as a minority.

[L]es pères de la Confédération n'ont guère prévu que la présence de francophones dans le futur pays allait entraîner des problèmes de coexistence, alors qu'ils ont aménagé avec soin le sort des anglophones de la future province de Québec.⁶⁵

[translation: [T]he Fathers of Confederation did not foresee that the presence of Francophones in the future country would lead to problems of coexistence, whereas they made careful provision for the fate of Anglophones in the Province of Québec.]

The "minoritization" of Francophones outside Québec without the necessary guarantees for their collective vitality would have serious consequences for these communities.

In the early decades of the 20th century, Francophone communities, especially in Ontario and Western Canada, were under strong pressure to assimilate. Education in French was outlawed in schools and English was imposed as the sole language.

In 1965, the preliminary report of the Royal Commission on Bilingualism and Biculturalism, created by the federal government of Lester B. Pearson and jointly chaired by André Laurendeau and Arnold Davidson Dunton, stressed the urgency of the situation regarding the place of Francophones in Canada: "We believe that there is a crisis, in the sense that Canada has come to a time when decisions must be taken and developments must occur leading either to its break-up, or to a new set of conditions for its future existence."⁶⁶

To remedy the situation, the Commission recommended that English and French be declared the official languages of the Parliament of Canada, the federal administration, and the federal courts. In general, the Commission also recommended providing a greater place for French in federal organizations, in Ontario and New Brunswick, promoting French or English education where the linguistic minority represented 10% of the population, and making the federal capital bilingual.

In 1969, French, the minority language in Canada, was given official status when the federal Parliament passed the *Official Languages Act*.

After a century marked by numerous infringements of French-language rights, a new trend slowly began to emerge. Major battles were waged in response to repressive policies and, with time, political recognition of French Canadians and Acadians led to significant social and institutional changes, regarding especially the right to education in the minority language and to school management.

From 1982, the *Canadian Charter of Rights and Freedoms* guaranteed the bilingual nature of the institutions of Parliament and the Government of Canada. The new constitutional rights gradually changed the country's attitude to language. Through these transformations, bilingualism is now more favourably perceived and accepted throughout Canada.

1.4 CONSTITUTIONAL DEBATES, 1960 TO 1995

The Multilateral Negotiations Preceding Patriation

In the 1960s, after a century under the governance of the *Constitution Act, 1867*, negotiations to modernize Canada's constitutional framework intensified. The Victoria Conference in 1971 was part of a series of constitutional negotiations intended to patriate Canada's Constitution. During that conference, the federal government tabled the following plans:

- adoption of a Canadian procedure for amending the Constitution that would mark full independence of Canada from the United Kingdom;
- changes to modernize federal institutions, including the Supreme Court of Canada;
- inclusion of a Charter of Rights in the Constitution.

In turn, throughout the constitutional negotiations of the 1970s, the Government of Québec made the following key demands in return for assent to the plan to patriate the Constitution:

- a redefinition of the division of powers, in particular to establish its legislative paramouncy in the areas of social policy, with full compensation where it opts out of federal programs;
- recognition within the new constitution of the two founding peoples;
- a veto over substantial amendments to the Constitution (such as the creation of new provinces).

Premier Robert Bourassa ultimately decided not to support the Victoria Charter, primarily because it did not clearly give Québec legislative paramouncy in the areas of social policy, with full compensation if Québec opted out of federal programs.⁶⁷ The Victoria Charter therefore achieved no outcome due to lack of unanimous provincial approval. The next decade saw many constitutional conferences and a host of intergovernmental talks in an attempt to reach consensus on the subject.

In the spring of 1980, the government led by René Lévesque proposed to negotiate a new association agreement between Québec and Canada, based on the principle of the equality of nations. Under that agreement, Québec would become a sovereign state while maintaining an economic association with Canada, sharing the same currency, for example.

The mandate to negotiate such an agreement with the Government of Canada was submitted to a referendum on May 20, 1980. As a result, 60% of voters refused to give the Government of Québec a mandate, while 40% supported the proposal. The turnout was 85.6% of registered voters (3.7 million votes cast).

Premier René Lévesque considered the clear recognition of the right to self-determination the most important gain from the 1980 referendum.

Following the referendum on sovereignty-association, the federal government of Pierre Elliott Trudeau once again attempted to reach an agreement with the provinces, before deciding to repatriate the Constitution unilaterally in October of that same year. Eight provinces, including Québec, strongly objected. Manitoba, Québec, and Newfoundland brought the issue before the courts. Similarly, the “Gang of Eight” signed an agreement in April 1981 providing for a constitutional amending procedure, in order to resume negotiations with the federal government. In September 1981, the Supreme Court of Canada ruled that the federal government’s plan to unilaterally repatriate the Constitution, although legally valid, could not be achieved on the basis of constitutional conventions.⁶⁸ The Court stated that an appreciable degree of provincial consent was conventionally required to amend the Constitution of Canada in this way.⁶⁹ Negotiations between the parties therefore resumed.

Québec and Patriation

Following an agreement reached in November 1981 between the Government of Canada and the governments of nine provinces, a new *Constitution Act* took effect on April 17, 1982, without Québec’s assent. In a reference to the Québec Court of Appeal, the Government of Québec challenged the validity of the *Constitution Act, 1982* in light of constitutional conventions. The Supreme Court of Canada ruled that patriation without Québec’s assent was possible because it did not have a veto under the constitutional conventions.⁷⁰

During the same period, the validity of the compact theory in Canadian constitutional law, a concept which had supporters in Québec and elsewhere in Canada, became less relevant, when the Supreme Court of Canada ruled that:

Theories, whether of a full compact [...] or of a modified compact theory, as urged by some of the provinces, operate in the political realm, in political science studies. They do not engage the law, save as they might have some peripheral relevance to actual provisions of the *British North America Act* and its interpretation and application.⁷¹

Essentially, the Government of Québec opposed passage of the *Constitution Act, 1982* on the ground that it lacked:

- sufficient guarantees to protect Québec’s national identity;
- the necessary conditions for Québec’s full participation in the development of the Canadian Federation.

Contrary to what had been observed in previous constitutional negotiations, the effort to obtain the unanimous consent of all the provinces was abandoned. Yet the significance of the changes introduced by the *Constitution Act, 1982*—namely the *Canadian Charter of Rights and Freedoms*, new rights for Aboriginal peoples, and the first entirely Canadian procedure for amending the constitution—would have justified maintaining this level of consensus.

While the players in these events may disagree on the reasons for which the concept of unanimous consent was abandoned and on the likelihood of the Government of Québec accepting a compromise had negotiations continued,⁷² all agree in retrospect that Québec’s exclusion from patriation had and continues to have serious consequences for the Québec nation and for Canada.⁷³

Since this second federative compromise was made without Québec, it is incomplete.⁷⁴ This is especially obvious in Québec’s ongoing discourse over its non-adherence to the *Constitution Act, 1982*.⁷⁵

The most decisive impact of patriation on Québec was clearly the loss of mutual trust between Québec and the rest of Canada, especially between their leaders, as noted by Peter Russell:

[The] loss of political trust between the leaders of English Canada and Quebec was another unintended consequence of the patriation moment. Whether or not that trust ever existed is another question. I doubt that it does today.⁷⁶

This event represents a second historic breach between Québec and Canada. The gradual move away from the concepts of federalism, accentuated by the centralizing historical interpretations of authors such as F. R. Scott and D. Creighton, became fully evident at the time of patriation. This new breach further distanced Québec from Canada, and has since posed an additional difficulty for a shared understanding of the foundations of Canada.

Constitutional Negotiation of the Meech Lake Accord

Québec's constitutional goals were subsequently based largely on the will to secure an appropriate constitutional space suited to Québec's specific situation and to its security (especially demographic and linguistic) and development (especially economic and institutional) within the Federation. At a symposium held in Mont-Gabriel in May 1986, Gil Rémillard, then Minister responsible for Canadian Intergovernmental Affairs, set out the "*principales conditions qui pourraient amener le Québec à adhérer à la Loi constitutionnelle de 1982*"⁷⁷ [translation: main conditions that could persuade Québec to adhere to the *Constitution Act of 1982*]:

- Explicit recognition of Québec as a distinct society;
- Guarantee of increased powers in matters of immigration;
- Limitation of the federal spending power;
- Recognition of a Québec veto over major amendments to the Constitution;
- Québec's participation in appointing judges to the Supreme Court of Canada.

During the 1984 election campaign, Brian Mulroney promised to bring Québec back into the Constitution “with honour and enthusiasm.” This promise was acted on in 1987 through an agreement in principle signed at Meech Lake by the federal and provincial first ministers intended to “allow Quebec to resume its place as a full participant in Canada’s constitutional development.”⁷⁸

The five conditions stipulated by Québec were reflected in the Meech Lake Accord:

- Québec, distinct society—Recognition in an interpretive provision and recognition of the role of the Québec legislature and government in promoting and protecting the distinct society;
- Federal spending power—Provisions governing the establishment of new jointly funded programs in exclusively provincial sectors and granting the right to opt out with fair compensation if there is a measure or program compatible with the national objectives;
- Supreme Court—Clarification of the Court’s constitutional status, guarantee of Québec representation, establishment of a role for Québec in the selection of Québec judges and a role for the other provinces in the selection of the Court’s other judges (proposal of a list of candidates and federal choice within the list);
- Procedure for amending the constitution—Expanded application of the rule of unanimous consent (veto), primarily for reforms of federal institutions currently covered by the “7/50” procedure; expanded scope of the right to fair compensation if opting out in all cases of transfer of jurisdiction to the federal Parliament;
- Immigration—Obligation, within the policy agreement accompanying the Meech Lake Accord, to sign a Canada-Québec agreement on the subject and constitutional mechanism for negotiating and protecting agreements between the federal government and the provinces in this area or related to the temporary admission of aliens.

In addition, the Meech Lake Accord contained the following provisions:

- Senate—Role for the provinces in the selection of senators (federal choice from a provincial list of candidates) as a temporary measure pending comprehensive Senate reform. Note that this provision of the Accord was temporarily implemented in the period between the signing of the Accord and its demise in 1990. On September 26, 1988, Prime Minister Brian Mulroney recommended the appointment of four Québec senators from a list of candidates submitted by Robert Bourassa’s government: Jean-Marie Poitras, Roch Bolduc, Solange Chaput-Rolland, and Gérald-A. Beaudoin. All four sat as Progressive-Conservative senators;
- Second round of negotiations—Annual constitutional conference and inclusion of comprehensive Senate reform on the agenda (function, role, powers, method for selecting senators, and representation in the Senate).

Although they garnered the support of the governments of all the provinces in 1987, these proposals for constitutional reform could not be ratified by two provincial legislative assemblies (Manitoba and Newfoundland) within the required time limit. Many authors believe this worsened the crisis of confidence triggered by the patriation of the Constitution.

[...] [L]’impact le plus important de la défaite de Meech ne concerne pas le fonctionnement du gouvernement, mais plutôt le sens d’appartenance des Québécois francophones au Canada, particulièrement leur confiance que le Canada soit disposé à faire une place à une société francophone dynamique et vigoureuse, à considérer cette société comme un partenaire fondamental de la Confédération et à préserver des dispositions constitutionnelles permettant à cette société de s’épanouir.⁷⁹

[translation: The most serious impact of the demise of Meech did not involve the workings of government but rather the French-speaking Quebecers’ sense of belonging to Canada, especially their confidence that Canada was prepared to make room for a dynamic, vigorous French-speaking society, to consider this society a fundamental partner in the Confederation and to preserve constitutional provisions enabling this society to flourish.]

Guy Laforest voiced this feeling of rejection, portraying himself as an exile in his own country: “[...] un exilé de l’intérieur, c’est quelqu’un qui se sent inconfortable, qui vit comme un étranger au sein de son propre pays.”⁸⁰ [translation: [...] an internal exile is someone who feels uncomfortable, who lives like a foreigner in his own country.] He adds:

*Beaucoup de Québécois ont vu, non sans raison, dans la réforme constitutionnelle de 1982, une tentative pour créer une seule et grande nation canadienne subsumant toutes les autres appartenances et en particulier celle découlant du nationalisme québécois moderne. L’adoption de l’accord du lac Meech aurait corrigé le tir à cet égard.*⁸¹

[translation: Many Quebecers rightly saw in the constitutional reform of 1982 an attempt to create a single broad Canadian nation subsuming all other identities, especially the one arising from modern Québec nationalism. Ratification of the Meech Lake Accord would have corrected this.]

The intergovernmental consensus on the Meech Lake Accord was truly present when it was reached in 1987, although certain measures (such as recognition of the distinct society) generated serious opposition in the public sphere.⁸² The Meech Lake Accord was ratified by the House of Commons and eight legislative assemblies which, in 1990, represented nearly 94% of the population of Canada.

Among other things, it was the combination of conditions imposed by the amending procedure,⁸³ as well as parliamentary dynamics, that defeated the Accord despite broad political support.

It is important to note that, for Québec, the primary characteristics of the Meech Lake Accord would always be presented thereafter as prerequisites for other constitutional talks proposed to modernize Canada.

Constitutional Negotiations after the Meech Lake Accord

In the spring of 1991, following the demise of the Meech Lake Accord, the Bélanger-Campeau Commission's report defined two possible ways forward for Québec: renewed federalism, or sovereignty. At the same time, a special joint committee of the House of Commons and the Senate on constitutional renewal (Beaudoin-Dobbie Committee) made a series of recommendations that went on to form the basis of the Charlottetown Accord, including recognition of Québec as a distinct society, while highlighting the importance of French-speaking minorities throughout Canada and of the English-speaking minority in Québec, an elected Senate and a stronger Canadian economic union.

The Charlottetown Accord focused more on Senate reform and Aboriginal issues than on the Québec issue, despite the fact that the latter was at the origin of the process. Under this comprehensive agreement, the demands specifically related to Québec were considered in conjunction with those of the other participants in the negotiations. The Charlottetown Accord also guaranteed that in future, Québec would have at least 25% of the seats in the House of Commons. When submitted to a referendum on October 26, 1992, the Charlottetown Accord was rejected by 57% of the electorate in Québec and 54% in the rest of Canada.

On September 7, 1995, Québec Premier Jacques Parizeau tabled Bill 1, *An Act Respecting the Future of Québec*, in the National Assembly. It proposed that Québec should democratically become a sovereign country and authorized the National Assembly to proclaim Québec's sovereignty. On October 30, 1995, electors in Québec were asked to vote, in a referendum, on the following question: "Do you agree that Québec should become sovereign, after having made a formal offer to Canada for a new Economic and Political Partnership, within the scope of the Bill respecting the future of Québec and of the agreement signed on June 12, 1995?" In the final result, 50.58% of the electorate answered "No" and 49.42% "Yes". The turnout was 93.5% of registered voters (4.7 million votes cast).

Following this series of failures, a few further attempts were made to consider to Québec's constitutional demands, but without rounds of formal multilateral constitutional negotiations.

Accommodation measures were taken within a political framework (motions in the House of Commons recognizing the distinct society in 1995 and that Quebecers form a nation within a united Canada in 2006), a legislative framework (federal legislation on regional veto), and an administrative framework (asymmetrical agreements on health, immigration, labour market development, parental leave, and UNESCO).

In 1997, the Government of Québec and the federal government agreed to bilaterally amend the *Constitution Act, 1867*, to render it legally possible to make the Québec school system non-denominational.

On numerous occasions, the National Assembly also repeated its opposition to the enactment of the *Constitution Act, 1982* without its consent.⁸⁴ However, Québec's non-adherence remains a political issue only, since in legal terms, the *Constitution Act, 1982* is applicable to Québec.⁸⁵

Today, more than twenty-five years have elapsed since the failure of the Meech Lake Accord, and Québec has still not formally agreed to the constitutional order established in 1982. The five conditions set out in the Accord as the prior conditions for Québec's adhesion were directly related to the original vision for the federative compromise and were intended to reintroduce, into the *Constitution Act, 1982*, the spirit of the Federation of 1867. They offer a clear illustration of the constitutional guarantees required to ensure suitable recognition for the Québec nation.

The background features a dark blue central area with rounded corners, resembling a speech bubble. To the left, a vertical gradient bar transitions from teal at the top to light green at the bottom. To the right, another vertical gradient bar transitions from pink at the top to purple at the bottom. The overall design is modern and graphic.

2. FROM 1995 TO THE PRESENT

In both Québec and Canada, society has changed significantly since the end of the Constitutional Era. This section describes, for each of the five conditions stipulated by Québec as prerequisite for its support of the *Constitution Act, 1982*, the events that track the progress made since they were first drafted. It then provides an overview of what has changed, in Québec and in Canada. Certain events in recent history will be presented to bring into focus the key factors for social, linguistic, economic and other transformations. How has Québec changed? In what way have the past 26 years marked Québec and Canadian society in addition to altering the dynamics of intergovernmental relations in Canada?

2.1 POLITICAL AND LEGAL DEVELOPMENTS

Although the process for reforming the text of the Constitution is at a standstill, the Canadian constitutional order has nevertheless continued to evolve, particularly due to the profound impact of the *Canadian Charter of Rights and Freedoms* on the country's political and legal structure. There has also been some formal integration of the principles underlying the Meech Lake Accord in the functioning of the Federation.

These principles have been echoed in particular at the administrative and judicial levels. For example, the asymmetry recognized in immigration has guided the signing of administrative agreements in other fields. In the judicial domain, the Supreme Court has rendered decisions recognizing the uniqueness of Québec, its social values, and its distinct civil law characteristics. Consideration for Québec's demands, however, still falls short of what Québec stipulated in 1987 as the minimum acceptable for its assent to the new constitution.

Recognition of the Distinct Society

In Québec, the existence of the Québec nation has long been the subject of a broad consensus. Because Québec society differs from the rest of Canada in many respects, the Government of Québec's objectives include the ability to implement public policies in its fields of jurisdiction that reflect the distinctive characteristics of Québec society and ensure its preservation. Formal recognition of the Québec nation would facilitate the attainment of these objectives, for example, by promoting a better understanding of why, in certain situations, Québec has to resort to asymmetry.

The flexibility sought by Québec instead implies that, due to its national character, it may have to exercise certain responsibilities that will not necessarily be placed on the other provinces.

Recognition of the Québec nation should be accompanied by greater acceptance of the concept of asymmetrical federalism that gives the Government of Québec the flexibility it needs to meet the needs of its citizens when specific components of its national character are at issue. For Québec, the inherent flexibility of federalism has enabled it

thus far to build its state and develop its identity. This flexibility should now enable Québec to gain recognition and acceptance of what it is.

L'asymétrie conférerait au gouvernement du Québec les pouvoirs dont il a besoin pour s'acquitter de sa responsabilité de soutenir et de promouvoir le caractère distinct du Québec, sans pour autant mettre en péril la capacité du gouvernement fédéral d'assumer les responsabilités qui lui incombent dans le reste du pays.⁸⁶

[translation: Asymmetry would vest the Government of Québec with the powers it needs to carry out its responsibility to support and promote Québec's distinct character without jeopardizing the federal government's ability to assume its own responsibilities in the rest of the country.]

It should be noted in this regard that the pursuit of greater asymmetry is not incompatible with the concept of equality between provinces. The flexibility sought by Québec rather implies that due to its national character, it may have to exercise certain responsibilities that will not necessarily be placed on the other provinces. This way of accommodating each component of the Federation can be understood as fostering attainment of greater functional equality between the provinces, and not just formal equality.

The language of “equality” between provinces has in fact been a source of confusion, screening the reality of what is at stake and making a solution more difficult. Equality is a notoriously difficult concept to apply and depends on the respect one makes salient. It could be argued that Quebec needs powers that other provinces do not, to cope with problems and a vocation that other provinces do not have. Accordingly, this point could be seen as a move towards equality (to each province according to its tasks), not away from it.⁸⁷

History has shown that far from undermining national unity and causing the breakup of Canada, the adoption of asymmetrical measures reduces undue tensions, counterproductive confrontations, and even demands for secession. This approach would therefore be likely to promote development of both allegiance to Québec and a sense of belonging to Canada. In other words, it would provide “adequate recognition” of Québec’s national character within Canada, as stated by political scientist Guy Laforest.⁸⁸

Since the Meech Lake and Charlottetown Accords, political recognition of the Québec nation has moved towards legal recognition of the distinct society.

- A few days before the 1995 referendum, Prime Minister Jean Chrétien promised at a public gathering to recognize Québec as a distinct society. This promise would be carried out in the form of a motion passed by the House of Commons on December 11, 1995.⁸⁹

- On November 27, 2006, at the initiative of Stephen Harper’s government, the House of Commons adopted the following motion: “That this House recognize that the Québécois form a nation within a united Canada.”

The two motions passed by the House of Commons constitute political recognition of Québec’s special status. It must also be noted that in its case law, the Supreme Court takes the existence of Québec’s distinct character into account. As Sébastien Grammond has stated, “[s]omme toute, les tribunaux se montrent moins hésitants que les politiciens à reconnaître le caractère distinct du Québec.”⁹⁰ [translation: overall, the courts have been less hesitant than the politicians to recognize Québec’s distinct nature.]

In its case law, the Supreme Court takes the existence of Québec’s distinct character into account.

In *Reference re Supreme Court Act, ss. 5 and 6 of 2014*, the Court examined the purpose of the provision of the *Supreme Court Act* stipulating that the three judges from Québec are to be appointed from among the judges of

the Superior Court or of the Court of Appeal of Québec, or from among the advocates of Québec:

The purpose of s. 6 is to ensure not only civil law training and experience on the Court, but also to ensure that Québec’s distinct legal traditions and social values are represented on the Court, thereby enhancing the confidence of the people of Québec in the Supreme Court as the final arbiter of their rights.⁹¹ [emphasis added]

It therefore appears that the concept of “distinct society” might have influenced the interpretation of the Supreme Court Act. In the same vein, retired Justice Brian Dickson pointed out that:

In fact, the courts are already interpreting the Charter of Rights and the Constitution in a manner that takes into account Québec’s distinctive role in protecting and promoting its francophone character. As a practical matter, therefore, entrenching formal recognition of Québec’s distinctive character in the Constitution would not involve a significant departure from the existing practice in our courts.⁹²

Among the decisions that reflect Québec's specificity, the controversial *Ford v. Québec*⁹³ decision is noteworthy. In it, the Supreme Court of Canada recognized that the Government of Québec had some flexibility in adopting provisions to ensure better protection of French and to ensure the language's predominance, given its vulnerable situation in Québec and Canada. This consideration that Québec is a distinct society is also present in the decisions *Solski*⁹⁴ and *Gosselin*.⁹⁵ On the issue of amending the Constitution, in *Reference re Secession of Québec*,⁹⁶ *Reference re Senate Reform*,⁹⁷ and *Reference re Supreme Court Act, ss. 5 and 6*,⁹⁸ the Court acknowledges Québec's distinct identity and uses this in part to set out a contractual vision of the foundations of the Federation.⁹⁹ These Supreme Court decisions reflect the need to abandon the vision of a unitary Canada defined by a single nation, and adopt instead a conception that fully reflects the national identities present in Canada.

To summarize, recognition of the Québec nation is now primarily political, although the case law refers to it on some occasions. The concerns that have often been expressed regarding such recognition have not been borne out. On the contrary, it has been observed that it is possible to recognize the Québec Nation without threatening the balance between the federative partners. This recognition of the Québec nation could, however, be given a more solid basis in the constitutional fabric and thus help Canada evolve towards a more pluralist conception of federalism. Such recognition would ensure that Quebecers no longer feel like exiles in their own country. To repeat Guy Laforest's words: "*Des Québécois qui ne seraient plus des exilés de l'intérieur devraient être capables de proclamer, à leur façon, leur allégeance envers le Canada, de s'engager dans des projets communs pour le XXI^e siècle.*"¹⁰⁰ [translation: Quebecers who no longer feel like internal exiles should be able to proclaim their allegiance to Canada in their own way and to engage in joint initiatives for the 21st century.]

Federal Spending Power

The expression “federal spending power” is used in Canada to designate the federal government’s ability to intervene financially in areas of its choosing, regardless of the division of powers established by the Constitution. These financial interventions have been the subject of endless federal-provincial discussions, especially since the end of the Second World War, when the federal government began to invest more in areas under the provinces’ constitutional jurisdiction, especially in connection with health, education, and social services. In fact, several attempts have been made in recent years to limit or even abolish this power.

Canada’s Constitution makes no specific mention of spending power and the courts have always remained silent on its constitutional origin. It should be noted that the reference usually is to “federal” spending power, given that Ottawa historically has always had more financial resources than the provinces.

In 2005, Québec challenged the constitutional validity of federal spending power in areas of provincial jurisdiction, in *Reference re Employment Insurance Act (parental leave reference)*,¹⁰¹ and in the case brought by the Confédération des syndicats nationaux and the Syndicat national des employés de l’aluminium d’Arvida against the federal government over employment insurance surpluses in 2008.¹⁰² In both cases, the Supreme Court of Canada declared that the challenged provisions were valid under federal jurisdiction over employment insurance (subsection 91(2A) of the *Constitution Act, 1867*) while at the same time remaining silent on the issue of federal spending power.

On the political stage, Stephen Harper’s Conservative Party made a commitment in the 2005-2006 federal election campaign to engage in “open federalism,” especially by limiting federal spending power. This commitment was repeated in the Speech from the Throne in October 2007 and November 2008. Yet the Speech from the Throne on March 3, 2010 included statements to the effect that the federal government would continue to restrict the use of federal spending power, which seemed to suggest that, in the government’s view, this commitment was fulfilled.

Despite several attempts, no constitutional or administrative agreement has thus far made it possible to solve the problems raised by the exercise of this power in Canada.¹⁰³ However, it should be emphasized that some key agreements have been concluded with the federal government to enable Québec to opt out with reasonable compensation from federal initiatives that would have constituted infringements of its fields of jurisdiction. Important examples of such agreements include the agreement on labour training and the agreement on parental leave.

In fact, the federal spending power has not declined and has now taken on new forms that might present a greater threat to the balance in the exercise of responsibilities between Québec and Canada over the long term. The increasing number of initiatives designed to fund projects on a merit basis in sectors under Québec's jurisdiction, which provide no guarantee that it will receive its fair share of the federal funds invested, as well as the use of trusts for direct transfers of funds to organizations or individuals, regardless of the division of powers, are two illustrations of a troubling extension of federal spending power.

In short, the idea of a federal spending power that does not take into account the division of powers appears contrary to the Constitution and incompatible with the federal principle of non-subordination of one government to another. The use of this power therefore harms the due process of intergovernmental relations. The division of powers necessarily requires the existence of inherent limits on "federal spending power," which the federal government still does not recognize.

Appointment of Three Québec Judges to the Supreme Court

First, constitutional protection for three Québec judges on the Supreme Court is a significant change in the mode of appointment of judges to this court. The protection was clarified in *Reference re Supreme Court Act, ss. 5 and 6*.¹⁰⁴ Citing the April 1981 agreement signed by Québec, the majority decision placed special emphasis on the constitutional guarantees specifically provided for Québec: "The intention of [s. 41 (d) *Constitution Act, 1982*] was demonstrably to make it difficult to change the composition of the Court and to ensure that Québec's representation was given special constitutional protection."¹⁰⁵ Furthermore, the decision granted explicit recognition to the importance of Québec's veto on this matter:

As explained above, the central bargain that led to the creation of the Supreme Court in the first place was the guarantee that a significant proportion of the judges would be drawn from institutions linked to Quebec civil law and culture. The objective of ensuring representation from Quebec's distinct juridical tradition remains no less compelling today, and implicates the competence, legitimacy, and integrity of the Court. Requiring unanimity for changes to the composition of the Court gave Quebec constitutional assurance that changes to its representation on the Court would not be effected without its consent.¹⁰⁶ [emphasis added]

On the manner of appointing these judges, despite many attempts following the failed Meech Lake and Charlottetown Accords to agree on a process rooted more deeply in constitutional convention and less in constitutional amendment, the power to appoint judges to the Supreme Court, exercised by the Prime Minister, has not yet changed. The process of appointing judges to the Supreme Court is still entirely the prerogative of the Prime Minister, who may proceed as he or she sees fit.

In April 2005, the federal government led by Paul Martin proposed administrative changes to the selection process for filling vacancies on the Supreme Court. Appointments were made subject to a more complex process involving consultations and an appearance before the federal Parliament by the Minister of Justice. Despite discussions to have Québec play a more formal role in this process, no agreement was reached. A similar process was discussed under Stephen Harper's government but to no further avail. After the *Reference re Supreme Court Act, ss. 5 and 6*, the consultation process was set aside.

In August 2016, the government led by Justin Trudeau returned to the matter by introducing a less partisan and more open process, in which a short list of three to five nominees is drawn up by an advisory committee of seven members from various segments of Canadian society. The list is then submitted for various consultations by the federal Minister of Justice before it is finally submitted to the Prime Minister, who makes a choice. For appointment of the three judges from Québec, the process provides that the composition of the committee must be tailored to take into account Québec's distinct legal tradition. These changes

were well received by the Government of Québec, which saw an opportunity to develop an arrangement with the federal government to reflect the uniqueness of the Québec nation and adequately address the specifics of the civil law tradition. Such an arrangement should allow for the Government of Québec to play a determining role in the advisory process leading to the final recommendation for the three judges from Québec.

In summary, constitutional protection for three judges from Québec at the Supreme Court of Canada has now been established, but Québec's participation in the appointment of its three judges remains unresolved. This situation could soon change given the federal government's recent openness to adjusting the new process as it relates to the appointment of judges from Québec, " [...] *pour tenir compte de la tradition juridique particulière du Québec.*"¹⁰⁷ [translation: [...] to take into account Québec's distinct legal tradition] It will be essential, however, for the Government of Québec to play a decisive role in the process, one that is adapted to its specific reality, as recognized by the Supreme Court.

The Right of Veto

Over the course of the many rounds of constitutional negotiations on the procedure for amending the constitution in the years prior to patriation, several matters were recognized as requiring a consensus among the federative partners. For the Government of Québec, obtaining a veto over certain important matters meant that fundamental changes to the workings of the Federation could not be made without its consent. The right of veto was constantly stated by successive Québec governments.

Following a promise by the federal government on the eve of the 1995 referendum to address certain historical claims by Québec, including recognition of a power of veto over major changes to the Constitution, the Parliament of Canada passed the *Act respecting constitutional amendments*,¹⁰⁸ commonly called the "Regional Veto Act."

To understand the mechanism in this Act, it is important to remember that the *Constitution Act, 1982* grants both houses of the federal Parliament a veto (suspensive for the Senate) over constitutional amendments that require federal-provincial agreement.

Based on the veto held by the House of Commons, the *Act respecting constitutional amendments* sets out the preconditions for tabling a motion for a resolution leading to certain multilateral amendments. In specific terms, it states that no minister of the Crown in the Government of Canada may table a motion in the House of Commons unless the proposed amendment to the Constitution has first obtained the consent of Ontario, Québec, British Columbia, at least two provinces representing at least 50% of the population of the Prairies (which in practice grants Alberta a veto) and finally, at least two of the Atlantic Provinces representing at least 50% of the population of that region.

This means that a constitutional amendment under this legislation must obtain the support of at least seven provinces representing more than 90% of the population. It should be noted, however, that the Act does not apply to amendments made under the special arrangements procedure (s. 43 of the *Constitution Act, 1982*), nor to those requiring unanimity (s. 41 of the *Constitution Act, 1982*). Finally, the Act does not apply to an amendment in respect of which a province may exercise its right to opt out (subsection 38(3) of the *Constitution Act, 1982*).

The right of veto delegated to Québec in this way by the federal government is not constitutionally guaranteed because it is based on an ordinary federal statute. Consequently, the “delegated” veto might be taken back following a simple shift in political will in Ottawa.

In addition, this type of legislation presumably imposes no effective legal obligations on the government, as recently shown by the *Conacher v. Canada* case.¹⁰⁹ In this case, the Federal Court repeated that the federal legislation stipulating elections on a fixed date¹¹⁰ could not override the Prime Minister’s prerogative to instruct the Governor General to dissolve Parliament, with the result that the legislation could be bypassed.

In the same way as for fixed-date elections, the mechanism set out in the *Act respecting constitutional amendments* provides exceptions. It can still be bypassed since it governs only ministers of the Crown, leaving any regular Member of Parliament free to table a motion for a resolution for a constitutional amendment. This legislation made the already complex process for amending the constitution even more cumbersome, and placed a further obstacle in the path of any future reform of the Constitution.

To summarize, the *Act respecting constitutional amendments* passed by the federal Parliament in the wake of the 1995 referendum has an essentially political value but no constitutional authority.

Increased Powers Over Immigration

Despite the failure of the Meech Lake Accord, the federal and Québec governments achieved a partial response in 1991 to one of Québec's historical claims, through an intergovernmental agreement, by signing the Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens (also called the "Gagnon-Tremblay-McDougall Accord"¹¹¹).

The political basis of the Accord is an explicit recognition of Québec's distinct nature and its power to exercise responsibilities, unique among Canada's provinces, that specifically allow it to ensure its demographic security and linguistic continuity. The Accord has two main aims, the sharing of powers with respect to the selections of immigrants, and a federal withdrawal from the field of immigrant reception and integration, accompanied by an annual payment of reasonable financial compensation. The compensation allows Québec to implement its own immigrant reception and integration programs, as long as services provided by Québec, when considered in their entirety, correspond to the services offered by Canada in the rest of the country. These terms must not be viewed as an accountability process, but rather a joint study process carried out on a yearly basis within the implementation framework as provided in the Accord (Joint Committee). Finally, it should be noted that the agreement cannot be changed unilaterally by either party and has no expiry date.

In practice, under this agreement, the Government of Québec has the exclusive power to select immigrants who wish to settle in Québec (except applicants in the family reunification category and refugees whose status is recognized in Québec) and has control over reception services and linguistic, economic, social, and cultural integration. The Government is also guaranteed the option of receiving a number of immigrants proportional to its demographic weight within Canada, plus an additional 5% if it deems appropriate.

Canada and Québec had signed various immigration agreements since 1971: Lang-Cloutier (1971), Andras-Bienvenue (1975), and Cullen-Couture (1978). The 1991 agreement is more comprehensive, however, because it reserves a broader range of responsibilities for Québec, especially with respect to the reception and integration of immigrants. These responsibilities are accompanied by annual payment of reasonable financial compensation, which increases the capacity for action and supports more efficient interventions. Some describe this agreement as “quasi-constitutional”¹¹² because of the bilateral mechanism necessary to amend it,¹¹³ but also given its administrative and political importance as well as its constitutional history. Yet the agreement remains an intergovernmental accord without the constitutional protection initially contemplated.

In short, Québec has a strong agreement that grants it a great flexibility in immigration matters, but it must now be entrenched in the Constitution.

A Current Assessment

As shown in the previous sections, federative relations between Québec and the rest of Canada have evolved over the past 30 years, and much ground has been covered since Québec set out its five preconditions for agreeing to the *Constitution Act, 1982*.

However, if constitutional negotiations resume, Québec’s basic conditions remain the same:

- Constitutional recognition for the Québec nation will always be of key importance for the Government of Québec.
- Québec’s involvement in the appointment of the three Québec judges to the Supreme Court is imperative in a federal system in which the Supreme Court is the final arbiter of federative disputes.
- Québec, because of its nationhood, must have a veto on major constitutional amendments that change the operation of our political system.

- The agreement on immigration must be given constitutional status, as originally intended.
- The “federal spending power” in areas of exclusive provincial jurisdiction must be defined in the Constitution, since it generates tension in the federative relationship.

The Government of Québec is still determined to see its demands discussed and to see all the federative partners involved in defining a mutually beneficial constitutional solution. In the interim, it is important to note that, as seen earlier, some of the principles underlying the Meech Lake Accord have been implemented to varying degrees in case law and in political actions. The courts have repeatedly acknowledged Québec’s uniqueness and have also confirmed the constitutional protection of Québec’s three judges on the Supreme Court. The House of Commons has granted the Québec nation political recognition. In addition, the Québec and Canadian governments have signed an innovative and exemplary intergovernmental agreement on immigration, which is of great importance for Quebecers and on which Québec’s unique integration model, interculturalism, is based.

The Government of Québec is still determined to see its demands discussed and to see all the federative partners involved in defining a mutually beneficial constitutional solution.

Last, Québec and the federal government have reached an agreement allowing Québec to opt out, with reasonable compensation, from certain Canada-wide financial initiatives that would have interfered considerably with Québec’s approaches. This is reflected particularly in workforce training and in the agreement on parental leave. These realizations constitute significant advances for Québec and illustrate the Canadian political system’s ability to incorporate the demands of the nations it comprises.

2.2 TODAY'S QUÉBEC

The constitutional history of the past thirty years helps explain Québec's current position with respect to the conditions it had defined for returning to the constitutional fold. However, no assessment would be complete without a look at the evolution of society in both Québec and Canada. To present a current profile of Québec, the factors for change since the last round of constitutional negotiations in the 1980s and 1990s are grouped under a series of major themes.

Diversity and Coexistence in Québec

In 2016, the population of Québec stood at 8,164,361, or 23.2% of Canada's population. This placed it second among Canadian provinces and territories, after Ontario (38.3%) and ahead of British Columbia (13.2%) and Alberta (11.6%).¹¹⁴ It is noteworthy that Québec's demographic weight, which was 28.9% in 1966, has now declined by more than five percentage points.¹¹⁵

Like other Western societies, Québec is faced with an aging population, a phenomenon that will increase in coming decades. The median age has risen from 25.6 years in 1971 to 42 in 2016, and if current trends continue, the median age of the Québec population could reach 44.7 by 2031.¹¹⁶

In the area of language, Québec is a diversified society with a French-speaking majority. Statistics Canada's 2011 National Household Survey found that 78.1% of Québec residents reported French as their mother tongue, compared with 7.7% for English and 12.3% for a language other than French or English.¹¹⁷ In terms of linguistic knowledge, 94.4% of Quebecers reported a knowledge of French and 47.3%, a knowledge of English.

Aboriginal languages are also used in Québec. They are grouped into three main language families: Algonquian, Iroquoian and Eskimo-Aleut. Nine Aboriginal languages are still spoken in Québec: Inuktitut, Cree, Innu, Naskapi, Attikamek, Algonquin, Micmac, Mowhawk and Abenaki. The language situation of the Aboriginal peoples is complex and varies from one nation to another.

Québec society has undergone profound changes in recent decades. This is true in economic terms for the French-speaking majority, as a number of Québec companies created and managed by Francophones have expanded greatly and raised Québec's profile worldwide. The resulting emergence of an increasingly dynamic French-speaking business class, as well as the major impact the *Charter of the French Language* has had on the use of French in the workplace, have enabled a growing number of French-speaking Quebecers to work in French.

The development of state instruments that have promoted the growth of Québec's economy, and the adoption of language policies that have made French Québec's official language, have driven a major social and political restructuring of relationships between language groups in Québec, including identity-related relationships. Today, Québec's

Québec's identity is enriched by contributions from people of all origins while remaining closely attached to the continuity of its distinct, French-speaking character and to the historic contribution of Aboriginal peoples and English-speaking community.

pluralistic and dynamic identity is enriched by contributions from people of all origins while remaining closely attached to the continuity of its distinct, French-speaking character and to the historic contribution of Aboriginal peoples and Québec's English-speaking community.

The following sections will shed light on the profound changes experienced by the French-speaking majority in Québec,

particularly in matters of identity and in the social and economic spheres. However, it is important to note that equally important changes have affected all the other groups making up the multi-faceted Québec population.

Québec's Aboriginal Nations

In 2015, the eleven Aboriginal nations of Québec formed a population of 104,633 people, comprising 92,504 members of First Nations and 12,129 Inuit and representing about 1.3% of the Québec population. Over half of this young population is under 30 years of age.¹¹⁸

The situation of the First Nations and Inuit is complex in many respects, in particular because of the heterogeneity of the Aboriginal nations and their social, economic and cultural differences across Canada and within Québec. According to the *Constitution Act, 1867*, responsibility for “Indians” and for the lands reserved for them lies with the federal Parliament. For this reason, the first government to which the First Nations turn for a response to most of their concerns is the federal government.

However, Aboriginal communities are also subject to provincial legislation. Moreover, for more than 40 years, Québec has been building very close institutional ties with them. In recent years, the Government of Québec has also developed an approach aimed at building partnerships with other Aboriginal communities.

The Government of Québec has expressed its willingness to harmonize its relations with the Aboriginal peoples and to develop these relations on the basis of mutual respect and cooperation. The initiatives of the Government of Québec take into account the high-priority needs defined by the Aboriginal communities and contribute to their economic and community development. The Government of Québec also supports the signing of agreements for empowerment and development with the Aboriginal peoples based on a partnership approach, and the renewal of existing agreements to continue the work already under way. The Government of Québec also tends, for example, to support more extensive participation by the Aboriginal communities in land and resource management and planning.

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The 1970s in Québec saw the emergence of a new approach to protecting and recognizing Aboriginal rights. In 1975, the *James Bay and Northern Quebec Agreement* was signed, the first modern treaty concluded with the Cree and Inuit. This was followed in 1978 by the signing of the *Northeastern Quebec Agreement* which also granted treaty rights to the Naskapi. The Cree, Inuit, and Naskapi nations obtained defined rights and advantages, land, governmental responsibilities and the funding

necessary to carry them out, in areas such as education, health, and social services, as well as certain indemnities, which gave them greater autonomy. In addition, the two orders of government recognized the need to ensure the political, cultural and economic continuity of the Aboriginal signatories on the territory covered by the agreements.

Québec then took further action clearly intended to promote better relations between the various Aboriginal nations and the general population. In 1983, the Government adopted 15 principles that set the standard for government action to recognize Aboriginal nations and forge a better relationship with them.¹¹⁹ The National Assembly of Québec subsequently passed two resolutions, in 1985 and 1989, recognizing Québec's 11 Aboriginal nations and their rights: the Atikamekw, Abenaki, Algonquin, Inuit, Cree, Innu, Mi'kmaq, Mohawk, Huron-Wendat, Naskapi and Malecite nations.

The early 2000s were marked by continuity in the recognition of the Aboriginal nations and in the exercise of their rights. The signing of the *Agreement concerning a new relationship between the Gouvernement du Québec and the Crees of Québec*, which would become known as the "Peace of the Brave", paved the way for the continued development of the James Bay territory, since it provided for an increased empowerment of the Crees in order to foster a greater autonomy in their economic and community development. For the first time, Québec agreed to maintain a nation-to-nation relationship based on mutual respect and partnership, which is now the chosen path with all Aboriginal nations. The Inuit and the Naskapi have also signed partnership agreements with the Government of Québec to support their economic and community development.

The Québec state recognizes the existing rights of the Aboriginal nations in its legislation, including in the *Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State*.¹²⁰ It specifically pledges "to promote the establishment and maintenance of harmonious relations with the Aboriginal nations, and to foster their development and an improvement in their economic, social and cultural conditions."¹²¹ It recognizes each Aboriginal nation's right to preserve and develop its language and culture.¹²² The Government of Québec also participates in discussions and negotiations aiming to settle Aboriginal comprehensive land claims.

Such discussions can also allow the parties to conclude shorter-term agreements to foster coexistence with Aboriginal nations and promote their socio-economic development, or make it possible to agree on solutions to specific issues. Thus, as many point out, “*la réalité des communautés autochtones est loin d’être uniforme tant sur le plan culturel, que dans le domaine politique et juridique.*”¹²³ [translation: the reality of Aboriginal communities is far from uniform in cultural terms or at the political and legal levels.]

The changes in the Government of Québec’s relationship with the Aboriginal nations are especially obvious in the case of the Cree, for whom the *James Bay and Northern Quebec Agreement* and the *Peace of the Brave* acted as a springboard for strengthening political and socio-economic relationships, especially by increasing the financial capacity of the Cree communities. The signing of the *Agreement on Governance in The Eeyou Istchee James Bay Territory* made the Cree Nation Government a reality. Its authority extends to Category I and II lands and covers various areas, including municipal management, the planning and use of natural resources and land management. The Eeyou Istchee James Bay Regional Government connects the Aboriginal and non-Aboriginal populations of James Bay, especially by ensuring joint management of Category III lands at the municipal and supra-municipal levels. These new structures are catalysts for development and address current issues while promoting a respectful coexistence that reflects the positive benefits resulting from a nation-to-nation relationship

For the other Aboriginal nations in the North that have signed land claims agreements—the Inuit and the Naskapi—the geographic dispersion of the former in several isolated coastal villages on the shores of Hudson Bay and Ungava Bay, and demographic considerations for the latter, have created conditions that have complicated their development. In addition, these nations have had to cope with a potential for natural resources development that is unevenly distributed across the territory. Nevertheless, the work continues, as reflected by long-term agreements that have been signed to promote job creation as well as economic and community development, such as the *Partnership Agreement on Economic and Community Development in Nunavik* (Sanarrutik Agreement) and the *Partnership Agreement on Economic and Community Development between Naskapis and Québec*.

In addition, given the challenges they face, such as the acute housing crisis and the high cost of living, the Inuit have undertaken a broad consultation process in recent years to mobilize their communities and find a set of solutions. In 2015, the organizations of Nunavik presented the Government of Québec with the consultation report *Parnasimautik*. Through this process, the Inuit intend to promote their culture, language and way of life, which are a source of pride, while improving their socioeconomic conditions.

Another important aspect of the Aboriginal reality in Québec is urban Aboriginal life. This refers to Aboriginal people who no longer live on reserves or in Aboriginal communities,¹²⁴ but rather in urban areas, where they generally form a diverse population in terms of origin and status. Whether they are simply in transit or whether they have left their community of origin for the long term, the Aboriginal people who move to the cities have motivations and aspirations that vary considerably. In this regard, the specialized literature generally mentions two categories of factors, namely factors of attraction (for example the wish to benefit from the services available in urban areas) and factors of repulsion (for example running away from a family environment or a social problem).

Although this Aboriginal presence in cities is statistically greater in the other Canadian provinces, the phenomenon continues to grow in scale in Québec. It is estimated by Aboriginal and other research organizations that between 40% and 53% of the Aboriginal population present in Québec does not live on a reserve. Among this Aboriginal population, Statistics Canada estimates that there are 900 Inuit in the metropolitan Montréal area alone.¹²⁵ It should be mentioned that the great variability of statistics in the field of Aboriginal studies may be explained in part by the “self-declaring” designations used in most studies, by the diversity of the concepts used to qualify the Aboriginal population, and finally by the different methodologies applied.

It has been noted that “Ninety percent of Quebec’s urban Aboriginal population is still from the communities, so close ties exist with the communities of origin and ancestral hunting grounds. There is nothing to indicate that these ties are weakening.”¹²⁶ As a result, the strategic issues faced by the public authorities concerning the urban Aboriginal

people include: adapted access to government services, and the implementation of measures to facilitate the inclusion of Aboriginal people in the urban fabric of Québec cities.

The English-Speaking Community

In 2011, people whose mother tongue was English formed 7.7% of Québec's population. This statistic, however, does not provide a complete profile of a complex, multifaceted community.¹²⁷ When Allophone individuals whose first official language spoken is English are added to this group, the English-speaking community in 2011 represented 935,635 people, about 12% of the total population of Québec.¹²⁸

Like the Québec nation as a whole, the English-speaking community has had to adapt to the social, economic, and political changes that have occurred in Québec over the past 150 years. In particular, English-speakers have migrated to the Montréal area, now home to 80.5% of the Québec population whose first (Canadian) official language spoken is English, and account for 22.3% of the total population of Montréal. The English-speaking community remains present but unequally distributed throughout Québec—1.7% of Québec's English-speaking community is found in Eastern Québec (4.3% of that region's total population), 5.9% in the Outaouais (17.4% of the population), 5.1% in the Eastern Townships and Southern Québec (8.7% of the population), 1.7% in the greater Québec City area (1.3% of the population) and 5.1% in the rest of Québec (4.1% of the population).¹²⁹

The English-speaking community has deep roots in Québec and has influenced its development. It contributes to the building of a modern Québec and to the expression of its identity, and also plays an important role in Canada's economic and political development. In the 19th century, members of this community contributed to the growth of major financial institutions such as the Bank of Montreal and, over time, established businesses that have prospered throughout Canada and around the world. Canadian prime ministers, such as John Abbott and Brian Mulroney, and one Québec Premier, John J. Ross, came from this community.

The scientific, cultural and social sectors have also benefited from the dynamic nature of Québec's English-speaking community through the remarkable contribution of internationally renowned researchers, authors, musicians and actors. The philanthropic spirit that prevails in the community has led to the founding of a number of recognized institutions, such as the Montreal General Hospital in 1819, and the major support organization for underprivileged people and families, Sun Youth, which began its activities in the 1950s and still plays a front-line role.

The English-speaking community shines at the national and international levels through the university institutions McGill, Concordia, and Bishop's, and also through the work of many artists and authors. The Quebec Community Groups Network, which includes more than fifty English-speaking community organizations across Québec, reflects the vitality and strength of this community.

The use of the English language in Québec is protected by important historical rights. English-speakers can address institutions of the state in their language, primarily due to section 133 of the *Constitution Act, 1867*, which allows anyone to speak in English in debates before the National Assembly or its parliamentary committees, and before the Québec courts. This constitutional provision also requires the Parliament of Québec to pass bilingual legislation, with both versions being equally authoritative. Furthermore, a party in a dispute may request translation at no cost of any judgment rendered by a court of justice and any decision rendered by a body discharging quasi-judicial functions.¹³⁰

A complete English-language educational system from kindergarten to university exists in Québec. Like the French-speaking population, the English-speaking community manages its primary and secondary schools through nine English-language school boards. English-speakers may also obtain public services from the Québec state in their own language, including health and social services, where allowed by the human, material and financial resources of institutions delivering the services. However, access to services in the regions is more difficult than in the metropolitan area. Under the Charter of the French Language, more than 80 municipalities are recognized as delivering services to residents in English.¹³¹

Despite the rights enjoyed by the English-speaking community, it faces its own challenges. English-speaking Québec residents find themselves in a special situation as members of both a minority and a majority: “[...] ils sont majoritaires au pays et sur le continent, mais minoritaires sur le territoire habité.”¹³² [translation: [...] they are a majority in the country and on the continent, but a minority in their home territory.]

This characteristic is even more marked for English-speaking Quebecers living outside the greater Montréal area, and geographic disparity poses challenges for political and community representation, institutions, and social, health, and education services for the English-speaking community. The vitality of regional institutions has become an acute issue for this community.

Anglophones established in the Montreal Metropolitan Area possess much of the institutional base: post-secondary institutions, teaching hospitals, business headquarters, and a critical mass in culture and communications. [...] The Mainland communities face isolation, large distances, and economic and demographic decline amongst their primary challenges.¹³³

Challenges persist for all English-speaking communities throughout Québec. Their small size in some regions has an impact on the institutions that convey and preserve their language and culture.

In summary, English-speaking Quebecers form a dynamic community whose contribution to Québec’s democracy, prosperity and culture is well established through the reputation of English-language university and healthcare institutions, and through the community’s entrepreneurial vitality and rich contribution to Québec’s architectural and cultural heritage. The English-speaking community has strong institutions, especially in Montréal, but faces a harsher reality in Québec’s regions. This community, which participated in the building of Québec, has a place in Québec’s history as well as its future.

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Immigration

Immigration has always been a driving force for change in Québec society. As a society open to immigration, Québec has always welcomed those seeking a better life and a more prosperous future for their descendants.

In the 19th century, for example, thousands of people left Ireland to settle in Québec. They and their descendants, who account for no fewer than 428,570 people based on data from the 2011 National Households Survey, have left an indelible mark on Québec society. The traces of the Irish presence in Québec are even visible in the City of Montréal's flag, which bears the emblematic shamrock, alongside the French fleur-de-lis, the Scottish thistle, and the English rose. The presence of these four symbols, side by side, bears witness to a common heritage founded on multiple identities.

The City of Montreal's flag can be seen to represent a diverse but inclusive Québec nation, with a multiple heritage that has shaped and continues to shape its pluralist nature. Québec has a rich history woven from the contributions of people from many backgrounds. The Québec nation is the outcome of these encounters.

Throughout the 19th and 20th centuries, thousands of other immigrants, especially French, Italians, Poles, Haitians, Vietnamese, and people from the Maghreb, to name but a few, also settled in Québec. This immigration has made Québec an ethnically and culturally diverse society.

Each year, Québec welcomes immigrants who come for economic reasons such as work and study, or to reunite with one or more members of their family. This accounts for most of the annual migratory movement. In addition, Québec places great importance on international solidarity by welcoming refugees and by responding to other humanitarian situations.

Due to its openness to immigration, Québec has an increasingly diverse character. Changes in Québec's immigration policy and the international geopolitical context have meant that fewer immigrants now entering Québec come from traditional immigrant pools such as Europe, while growing numbers come from Africa. In 2011, Québec's immigrant population represented four main continents of birth,

as 19% of this population was born in Africa, 31% in Europe, 23% in Asia, and 27% in the Americas.¹³⁴

Since 2001, in fact, Québec's population has grown primarily through net migration (international and interprovincial) and the hosting of non-permanent residents, as opposed to natural growth (births minus deaths).

The new Québec Policy on immigration, participation, and inclusion, *Together We Are Québec*, focuses on the contribution of immigration to our prosperity and to the vitality of the French language. As the only predominantly French-speaking society in North America, Québec has given priority to ensuring that immigration contributes to the continuity of the French fact. In addition, welcoming young, educated workers and dynamic business people promotes the vitality of the economy and addresses the demographic challenge faced by Québec society, especially by expanding the working-age population and slowing the decline in Québec's demographic weight within Canada.

The French-speaking majority is also clearly diversifying due to the growing proportion of immigrants who report a knowledge of French. Before 1971, only 73% of immigrants said they knew any French.¹³⁵ Until 2000, this proportion hovered around 78%, but climbed to 82% between 2001 and 2011.¹³⁶ In 2012, 86% of immigrants settling in Québec had a knowledge of French, were taking francization courses, or were children being educated in French in Québec schools.¹³⁷ The vast majority of children whose parents have immigrated to Québec are being educated in French,¹³⁸ in compliance with the *Charter of the French Language*. Thus, virtually all immigrants acquire a knowledge of French by the second generation. In addition, between 1971 and 2011, knowledge of French among Québec's Anglophones rose sharply, from 37 to 69.8%.¹³⁹ Among Anglophones under age 24, 82.5% speak French.¹⁴⁰

French is the official language of Québec. The measures taken by successive governments to promote its use have allowed it to progress such that the percentage of Quebecers with a knowledge of French rose from 88.5% in 1971 to 94.4% in 2011.

Now as in the past, immigrants have enriched Québec society by creating dynamic institutions and contributing to our cultural, social, and economic life. Ethnic and cultural diversity has helped to increase the innovative capacity of businesses and productivity. More generally, immigration provides a significant source of investment capital,

Now as in the past, immigrants have enriched Québec society by creating dynamic institutions and contributing to our cultural, social, and economic life.

contributes to Québec's dynamic business sector, and helps to provide for some of the business sector's workforce needs.

This entrepreneurial dynamic is reflected notably in the creation of various economic development

institutions formed of entrepreneurs from many backgrounds, such as the Chambre de commerce latino-américaine du Québec, Chambre de commerce et d'industrie française au Canada, Jewish Chamber of Commerce, Chambre de commerce hellénique du Montréal métropolitain, Réseau des entrepreneurs et professionnels africains, Jeune Chambre de commerce haïtienne, Chambre de commerce et d'industrie Canada-Liban, Canadian Italian Business and Professional Association, Italian Chamber of Commerce of Canada and the Congrès Maghrébin au Québec. Foreign students attracted to Québec also make a dynamic contribution to the education and research systems, while generating major economic benefits.

This long history of welcoming diversity into the Québec nation, specifically based on democratic values and the use of the French language—the official language of Québec and the shared language of public discourse—lies at the source of a unique approach to living together: interculturalism.

Interculturalism

Québec society has always been influenced by the blending of heritage and intercultural relations. Québec's diversity is not limited to recent immigration; the components of our ethnocultural diversity include recent immigrants, of course, but also people who were born here and members of families that have lived in Québec for generations.

Québec has been able to assert its distinct Francophone character in North America with determination, while fostering respect for human rights and freedoms. It is this dynamic that has enabled the emergence of a unique pluralistic model of integration and coexistence: interculturalism.¹⁴¹

In recent years, the identity debate in Québec has evolved. The question of identity in Québec has gradually expanded from the place of French and Québec in Canada to the space given to ethnic and cultural diversity as well as religious expression in Québec society. The *Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles* (Bouchard-Taylor Commission) is a prime example.

The model of interculturalism developed in Québec, based on the principle of reciprocity, aims to strike a balance between openness to diversity and the continuity and vitality of Québec's distinct and French-speaking identity.

The model of interculturalism developed in Québec, based on the principle of reciprocity, aims to strike a balance between openness to diversity and the continuity and vitality of Québec's distinct and French-speaking identity. The minority status of French-speaking Quebecers in Canada and North America has led Québec to adopt a model tailored to its unique situation, characterized by:

[S]triving to find a balance between, on the one hand, the continuity of a collective identity intrinsically linked with Québec's history and its distinct and Francophone character and, on the other hand, openness to mutual and collective enrichment through the recognition of diversity and the promotion of intercultural dialogue and rapprochement.¹⁴²

Québec's interculturalism acknowledges that the richness of our diversity necessarily generates multiple belongings that must be recognized and respected. It is based, first of all, on 400 years of history of a people proud of their roots and on a common language that we hope to preserve, share and pass on to future generations. At the same time, interculturalism recognizes that our identity is dynamic and

that it evolves, owing to the contribution of people of various origins. As summarized by Jocelyn Létourneau, "*la construction d'une histoire et d'une mémoire nationales qui tiennent compte de la diversité ethnoculturelle croissante du Québec et qui rendent le passé canadien-français significatif et accessible aux citoyens de toutes origines, sans le vider de ce qui en fait la substance, apparaît d'ailleurs une voie royale à suivre pour consolider l'identité collective en formation au Québec*".¹⁴³ [translation: the construction of a national history and national memory that take into account the increasing ethnocultural diversity of Québec, and that make the French-Canadian past meaningful and accessible to citizens of all origins, without emptying it of its substance, appears to be the ideal solution to consolidate the collective identity being formed in Québec.]

This approach facilitates the integration of immigrants into the stream of Québec's history. In this regard, the report of the Bouchard-Taylor Commission mentioned problems in reconciling the legitimate concerns of the Québec nation, as a minority in Canada, and the responsibilities of that nation as a majority within Québec, in welcoming new citizens into a society under the rule of law that aims to treat everyone fairly:

It would certainly be unfair to demand of small minority nations somewhat mistreated by history and constrained to grow by following a perilous course the assurance of imperial nations. In the course of their history they have advanced and withdrawn and experienced surges and doubts.¹⁴⁴

In short, Québec's identity faces new challenges in this ongoing process of balancing the individual and the universal. The interculturalism model is promising in this regard. As Jocelyn Maclure summarized:

*Personne ne pense qu'une politique de l'interculturalisme serait une panacée qui réglerait tous les problèmes inhérents aux sociétés diversifiées. Une politique interculturelle bien conçue, équilibrée, serait néanmoins une contribution utile à la construction d'un cadre civique commun en phase avec la diversité de la société québécoise d'aujourd'hui.*¹⁴⁵

[translation: No one thinks that a policy of interculturalism is a panacea that will solve all the problems inherent in diversified societies. A well-designed, balanced intercultural policy would nevertheless be a worthwhile contribution to the building of a common civic framework in line with the diversity of today's Québec society.]

Today it is essential that interculturalism, as a form of integration that favours living together, be formally recognized. This is why Québec intends to present an official policy on interculturalism.

Interculturalism aims to take on a central role within our common civic framework founded on democracy, human rights and freedoms, and French as the common language of public discourse which unites Quebecers of all origins.

In doing so, we can ensure that ethnocultural diversity is both recognized and promoted and, at the same time, our civic framework fortifies our common good and prevents society from fragmentation into isolated communities and practices that conflict with our fundamental democratic values.¹⁴⁶

A Multiplicity of Belongings

The sense of belonging to one's country may vary from one federated entity, region or community to the next. A number of researchers have measured the degree of attachment of Canadians to their province and to Canada. In Québec, as a general rule, it has been observed that despite fluctuations over time, the sense of belonging to Canada is strong for a broad segment of the population. For example, the results of the General Social Survey – Canadian Identity, carried out by Statistics Canada and published in 2015, showed that 70% of respondents in Québec were "proud" or "very proud" to be Canadian. According to the same survey, elsewhere in Canada the percentage of respondents who stated that they were "proud" or "very proud" to be Canadian ranged from 91% to 94%, depending on the province.¹⁴⁷

Furthermore, the sense of belonging to Canada seems to be increasingly widespread among young Quebecers. According to a CROP survey commissioned in October 2015 by the Chaire de recherche sur la démocratie et les institutions parlementaires (CRDIP) at Université

Laval, 79% of respondents aged 18 to 34 agreed with the statement "*être Canadien(ne) fait partie de mon identité.*"¹⁴⁸ [translation: being Canadian is part of my identity.] This result, which is higher than that recorded in other age groups, represents a 13% increase over a period of nearly 25 years.¹⁴⁹

Quebecers' sense of belonging to Canada has a particular way of expressing itself, owing to the existence of a strong national Québec identity to a degree that has no equivalent in the other Canadian provinces. For example, a survey carried out by Forum Research in 2012 revealed that 49% of Québec respondents primarily identified themselves as citizens of their province, whereas 38% primarily identified themselves as Canadians. In Canada as a whole, 67% of respondents primarily identified themselves as Canadians, and 19% primarily identified themselves as citizens of their province.¹⁵⁰ More recently, data from the above-mentioned CROP-CRDIP survey indicated that 58% of respondents considered themselves "*avant tout Québécois(e)*", [translation: Quebecer first] compared with 42% who stated that they considered themselves "*avant tout Canadien(ne)*."¹⁵¹ [translation: Canadian first.]

The expression of the Québec national identity is based not only on a strong sense of belonging to Québec, but also on the existence of a unique history, culture and set of values in Québec. According to a Léger Marketing survey published in 2012, 82% of Quebecers agreed with the statement that "Quebec, because of its language and heritage, is different from the rest of the country." Elsewhere in Canada, a majority of respondents (56%) also agreed with this statement.¹⁵² The same year, an Angus Reid survey carried out on behalf of the magazine *L'Actualité* revealed that in Canada as a whole, 76% of respondents believed that Québec has different values from the rest of the country.¹⁵³

These results demonstrate both a strong Québec national identity and a broadly shared sense of belonging to Canada. According to a Léger Marketing survey published in 2014 on behalf of the Association for Canadian Studies, 66% of Quebecers either "strongly agreed" or "somewhat agreed" with the idea that they do not feel they have to choose between being a Quebecer and being a Canadian.¹⁵⁴

Public opinion surveys tend to demonstrate that in Québec, the sense of belonging to Canada, although undeniable, remains complex when compared with the rest of Canada. This way of being Canadian, specific to Québec, may be summarized as follows:

- there is a strong sense of a Québec national identity;
- to varying degrees, a large majority of Quebecers also have a sense of belonging to Canada;
- elsewhere in Canada, it is recognized that in a number of ways, Québec has its own unique culture and identity;
- the majority of Quebecers feel that they are both Quebecers and Canadians.

A vast majority of Quebecers feel a strong attachment to Québec, based on a national identity forged over a period of over 400 years that is increasingly recognized elsewhere in Canada. Despite the difficult episodes of the Meech Lake Accord and the referendum on sovereignty that followed in 1995, Quebecers also retain an attachment to Canada. Many people feel both an allegiance to Québec and a sense of belonging to Canada. For most Quebecers, this multiple sense of belonging is not seen as a contradiction but as something to be valued.

Many people feel both an allegiance to Québec and a sense of belonging to Canada. For most Quebecers, this multiple sense of belonging is something to be valued.

Solitudes and Solidarity, Ties That Bind Québec and Canada

The Québec-Canada relationship has often been referred to as the two solitudes, an expression attributed to Hugh MacLennan, author of the novel *Two Solitudes*, published in 1945.¹⁵⁵ Seventy years later, the situation is more nuanced.

The book *Cracking the Quebec Code* reveals that out of 500 attitudes and behaviours, 71% are shared by French-speaking Quebecers and their English-speaking compatriots in the rest of Canada. According to the authors, one should “*éviter d’exagérer grossièrement les différences entre les francophones du Québec et les anglophones du reste du Canada.*”¹⁵⁶ [translation: avoid overly exaggerating the

differences between Francophone Quebecers and English-speakers in the rest of Canada.]

However, it should be noted that some areas of solitude remain between Québec and Canada, particularly from the artistic and cultural viewpoints. According to *Cracking the Quebec Code*, French-speaking Quebecers are highly attached, in particular, to their own cultural television production, whereas English-speaking Canadians turn more towards American television production.¹⁵⁷ For example, “[...] en mars 2016, 28 des 30 émissions les plus écoutées au Québec étaient produites au Québec, alors que seulement 5 des 30 émissions les plus écoutées au Canada anglais étaient produites au Canada [...]”¹⁵⁸ [translation: [...] in March 2016, 28 of the 30 most-watched programs in Québec were produced in Québec, whereas only 5 of the 30 most-watched programs in English Canada were produced in Canada[...].]

There are other examples that illustrate the artistic and cultural solitudes. Books from Québec are scarce in the rest of Canada, and despite their strong international reputation, Québec film artists have difficulty gaining recognition elsewhere in Canada. *Cracking the Quebec Code* reveals in this respect that “seulement 1% des Anglo-Canadiens préfèrent les films québécois” [only 1% of English Canadians prefer Québec films], and that “seulement 1% des Franco-Québécois préfèrent les films du Canada anglais.”¹⁵⁹ [translation: only 1% of French-speaking Quebecers prefer films from English Canada.] A similar observation may be drawn regarding a substantial part of Québec’s musical production. In the same way, the outreach of English-speaking Canadian artists is relatively limited in French-speaking Québec. In short, “[...] la culture québécoise intéresse peu le Canada anglais et la culture canadienne-anglaise intéresse peu le Québec francophone.”¹⁶⁰ [translation: English Canada is not very interested in Québec Culture and Francophone Québec is not very interested in English-Canadian culture.]

In the area of academic research and knowledge production, as demonstrated by François Rocher in the field of social sciences, research conducted in French in Canada is too seldom taken into consideration by non-Francophone researchers, regardless of the quality or volume of the research involved.¹⁶¹ The same phenomenon is observed regarding scientific production in the field of law, and in this respect, Jean-François Gaudreault-DesBiens evokes the existence of legal solitudes in Canada.¹⁶²

Although these solitudes are an undeniable reality, over the decades, Québec and Canada have also been forging deep ties and lasting solidarity. The Québec identity includes a substantial portion of Canadian identity, just as the Canadian identity includes a substantial portion of Québec identity. As far as language is concerned, Québec and Canada have always had a sizeable linguistic minority that represented the other's majority.

On an economic level, the era of domination by an English-speaking élite is long gone. Québec is a prosperous society and its French-speaking majority now occupies its rightful place in its own economic development and in that of Canada. The economic solitudes have vanished. Today, the Caisse de dépôt et placement du Québec is a major investor throughout Canada. Québec's cooperative movement, particularly the Mouvement Desjardins, is confidently building unprecedented ties with the rest of Canada, where it is sharing its unique expertise.

The Québec identity includes a substantial portion of Canadian identity, just as the Canadian identity includes a substantial portion of Québec identity.

Another reflection of this increasing economic solidarity is that Québec is now working in partnership with the other provinces to broaden its trade opportunities around the world. The trade mission of the provincial and territorial premiers to the People's Republic of China in 2014 reflects this reality, as does Québec's active participation in intergovernmental forums between the Canadian provinces and the American states that share a common geographical space. In this regard, the New England Governors/Eastern Canadian Premiers Conference, which brings together the governors of the six New England states and the premiers of Québec and the four Atlantic provinces, constitutes a high-level regional forum that fosters cooperation in a number of areas, including trade and transportation. In addition, Québec and Ontario are members of the Conference of Great Lakes and St. Lawrence Governors and Premiers, where they work in partnership with eight American states to strengthen the economy of the region and improve its competitiveness at the international level.

Also, barriers to trade between the provinces and territories have been continually decreasing. In 1995, the *Agreement on Internal Trade* (AIT) came into force, and its scope has gradually been broadened over the

years. Through the Council of the Federation (CoF), the provinces and territories have continued to exercise leadership in this respect. On April, 7th, 2017, the premiers announced the new *Canadian Free Trade Agreement* (CFTA). This innovative agreement will foster even greater trade, investments and labour mobility between the provinces and territories. It will cover all sectors of the economy, facilitate the gradual reduction of the regulatory burden and further open public procurement. In contrast to the AIT, this agreement is based on what is known as the “negative list” approach, where all government measures will be subject to the obligations unless specifically excluded. Québec thus remains free to protect specific sectors of its economy, notably the collective marketing of farm products (including supply management of dairy products) and the forestry sector.

In this respect, one must not overlook the significance of the Canadian market for the Québec economy, as it was recently illustrated by the conclusion both of a hydroelectricity sales contract and of the *Trade and Cooperation Agreement* with Ontario. Moreover, external trade is a fundamental determinant of Québec’s economy. The ministère de l’Économie, de la Science et de l’Innovation estimated that in 2015, Québec’s total trade (combining exports and imports of goods and services) was \$374 billion.¹⁶³ In 2015, 39.7% of exports of goods and services by Québec (\$71.3 billion out of a total of \$179.4 billion) went to the other provinces and territories, representing 18.7% of Québec’s GDP.¹⁶⁴ The fact that more than one-third of Québec’s exports are sent to the Canadian market is particularly significant considering the proximity of the American market, which is substantially larger. Again in 2015, Québec posted a positive trade balance with the rest of Canada, at over \$6.2 billion. In fact, between 2010 and 2015, Québec’s trade balance with the rest of Canada was always positive.¹⁶⁵ The Québec market is just as important from the viewpoint of its Canadian partners. For example, in 2015, 33.5% of Québec’s total imports (goods and services) came from interprovincial trade (\$65.1 billion out of a total of \$194.4 billion), representing 17.1% of Québec’s GDP.¹⁶⁶ The significance of the Canadian market for Québec’s economy and businesses, just like that of Québec’s market for Canada, rightly represents an important factor of solidarity.

Moreover, it should be noted that in recent years, Québec has often benefited from the economic solidarity made possible by the fiscal structure of the Federation. Another way to illustrate solidarities is found in the establishment of the equalization program, which seeks to offer comparable services to citizens notwithstanding the relative wealth of the province where they reside.¹⁶⁷

Today, important channels exist between the Québec and Canadian communities, in all spheres of civil society, particularly the business world, labour unions, interest groups—including those concerned with the environment—and political forces. A number of charitable and non-governmental organizations unite Québec citizens with those of Canada towards common causes, and contribute to building increasingly numerous areas of solidarity. As a more specific example, in recent years, strong Canada-wide movements have taken shape that are united in their determination to fight against climate change.

Finally, the federal formula itself, to use the expression of André Burelle, allows “*une émulation féconde entre les provinces*”.¹⁶⁸ [translation: a fruitful emulation between the provinces.] This encourages innovation and diversity in the political responses to various issues, often to the benefit of the greater number. The role played by Québec in the fight against climate change reflects this reality.¹⁶⁹

As does, among various other examples, the innovative role played by Québec in the area of parental leave, which has now inspired other provincial governments, as well as the federal government.

Even though certain aspects of the relationship between Québec and Canada may be considered as the coexistence of two solitudes, there are also many ties of solidarity that help build a common identity.

While Québec has helped shape Canadian policies through its autonomous action, it has also

gained from the emulation that arises out of the federal dynamics. In this respect, it is worth recalling the example of Saskatchewan. Under the leadership of Tommy Douglas, the province adopted visionary social programs, in particular public health insurance, a socially progressive leap later taken by all of Canada, including Québec. As a contemporary example, it would be worthwhile to draw inspiration from the approach advocated by British Columbia in its relations with Aboriginal communities.¹⁷⁰

In summary, even though certain aspects of the relationship between Québec and Canada may be considered, even today, as the coexistence

Through these areas of solidarity, Quebecers can exist in the Canadian political space, while affirming their own national identity.

of two solitudes, more particularly on the artistic and cultural levels, there are also many ties of solidarity that help build a common identity. They indicate that the areas of solitude that remain are gradually shrinking. Based on these ties, which open up a space for dialogue and mutual recognition, many

Quebecers believe that the Canadian Federation can continue to develop through partnership rather than confrontation. Through these areas of solidarity, Quebecers can exist in the Canadian political space, while affirming their own national identity.

The Economy and Globalization

The global economic and political context in which Québec and Canada operate has changed considerably since the Meech Lake Accord. From a knowledge-economy perspective, Québec now ranks among the most prosperous nations in the world. High value-added economic ecosystems, such as the digital industry and aeronautics, are taking shape and advancing. As recently mentioned by the ministère des Relations internationales et de la Francophonie,¹⁷¹ virtually all the components needed to manufacture an aircraft are made within a 30 km radius of Québec's metropolis. Thus, Montréal is one of the few places in the world where a plane can be assembled from A to Z. Québec ranks third in the world in the development of video games. It also hosts several major global pharmaceutical companies where all stages in the development of a new drug can be completed, from basic research to marketing. Montréal is now the city with the second-largest number of university students per capita in North America, after Boston. Québec City has one of the highest concentrations of research and technology transfer centres in Canada, and distinguishes itself year after year in the world rankings of "smart cities."

At the international level, in federations such as Canada, the increasing number of trade agreements combined with the emergence of new types of treaties (protection of cultural heritage, recognition of the rights of Indigenous peoples) have significant impacts on both orders of government.¹⁷² Indeed, while in the past the subjects discussed at international forums essentially tended to be related to areas under the jurisdiction of the federal Parliament, such as defence, navigation and international trade, this is no longer the case. In fact, even issues of a more local nature that normally fall under provincial jurisdiction, such as social policies, are discussed in the international arena. However, it is generally the federal government that participates in international forums, even when the issues being discussed fall in principle under exclusive provincial jurisdiction.¹⁷³ The provinces may take part in Canadian delegations, in accordance with a range of practices, but always under the authority of the Canadian head of mission. The effect of this is to further disturb the constitutional balance, resulting in a “federative deficit.”

In Canada, this new reality has resulted in the mobilization of the provinces and territories, which have initiated discussions with the federal government to establish more formal consultation mechanisms. It has also given rise to the emergence of many forums in which federated states are in a better position to exercise their jurisdiction at the international level. For example, in the environmental field alone, such forums include the Western Climate Initiative, which fosters connections between cap-and-trade systems for greenhouse gas emissions in North America, the Climate Registry, the Climate Group and the International Carbon Action Partnership.

2.3 THE CANADIAN PERSPECTIVE

The Resurgence of Aboriginal Demands

Since the 1970s, legal action taken by Aboriginal nations has profoundly altered the relationship they maintain with governments and has placed renewed emphasis on the obligations of both orders of government. The recognition of ancestral rights,¹⁷⁴ the definition of Aboriginal title and the criteria through which their existence can be established over particular lands,¹⁷⁵ the Crown's obligation of consultation,¹⁷⁶ the discriminatory nature of the *Indian Act* towards women,¹⁷⁷ the recognition of the Aboriginal rights of the Métis,¹⁷⁸ to mention only these aspects of case law, are important milestones that urge governmental actors to instigate and carry on a new respectful dialogue with the Aboriginal nations. Moreover, in 1982, the existing rights—Aboriginal or treaty rights—of the Aboriginal peoples were recognized and confirmed through the Canadian Constitution.¹⁷⁹

Through these developments, Canada has seen an unprecedented political and social resurgence in its Aboriginal peoples. The Aboriginal question, which was long neglected in federal-provincial relations, is increasingly seen as a key item on the agenda.¹⁸⁰ The Aboriginal voice itself has become multi-faceted: there are various advocacy groups, defending the interests of Aboriginal nations, Aboriginal women, the Métis, etc.

In the area of Aboriginal affairs, certain authors note that the Supreme Court of Canada is gradually moving away from a reading based on “rights and freedoms” and is shifting towards an approach reminiscent of a particular type of federalism, particularly in decisions dealing with self-government and mandatory prior consultation.¹⁸¹ For example, recent Supreme Court decisions in the area of Aboriginal affairs are moving away from the territorial tradition of Canadian federalism inspired by American republicanism, which advocates a single united and indivisible nation, and towards a pluralistic tradition of federalism, analogous to that promoted by Québec since 1867, which emphasizes the coexistence of several nations within a single entity as well as the establishment of mechanisms to ensure the management of this national diversity.¹⁸²

The New Legitimacy of the Francophonie in Canada

Today, bilingualism is a key component in Canada's identity. The provincial and territorial governments, as well as the federal government, recognize and affirm the Francophonie as an integral part of Canadian identity. Constitutional recognition for this linguistic duality has provided leverage for the growth of services in French. This was not accomplished all at once, and many political and legal battles had to be waged. Despite a relative decline in the use of French in Canada, the future today is brighter than before.

According to the 2011 census,¹⁸³ there were 1,066,580 people whose mother tongue was French and who lived in Canada but outside Québec, compared with 1,012,540 in 2006. This currently means that 4.2% of the Canadian population outside Québec have French as their first language, a slightly smaller percentage than that observed in 2006, when the percentage was 4.3%. As for the number of people who primarily use French at home, their relative percentage has also decreased slightly from 2.7% in 2006 to 2.6% in 2011. Again according to the 2011 census, nearly 10 million Canadians stated that they could hold a conversation in French, compared with nearly 9.6 million in 2006.

However, for more than fifty years, the demographic weight of French-speakers (with French as their mother tongue) in Canada, outside Québec, has been decreasing. Two important factors have contributed to this decrease, namely intergenerational language transfer (parents passing on the English language to their children) and international immigration.

It should be kept in mind that at present, one in three Canadians was born abroad or is the child of first-generation immigrants. On average, over the past 20 years, about 235,000 new immigrants have come to settle in Canada each year, of whom over 80% have neither French nor English as their first language.

In general, of the country's two official languages, a large majority of these immigrants know only English and use it at work and in everyday life. Accordingly, it is usually English that is used in the homes of immigrants outside Quebec.¹⁸⁴

Based on these observations, Statistics Canada projects that between 2011 and 2036, the proportion of the Canadian population with English or French as their mother tongue could decrease, whereas the proportion whose mother tongue is other than English or French could increase.¹⁸⁵ Also, given the substantial contribution of immigration to the country's demographic growth, Statistics Canada projects that outside Québec, because of the strong attraction of English, the use of French as the first official language spoken as well as the proportion of Canadians with a knowledge of both official languages will tend to decrease.¹⁸⁶

Also, in November 2014, the Commissioner of Official Languages, Graham Fraser, and the French Language Services Commissioner of Ontario, François Boileau, published a report indicating that it was urgent to act in the area of Francophone immigration in Canada, since the minority French-speaking communities had hardly benefited from Francophone immigration.

In order to counter this trend, the participants at the Ministerial Conference on the Canadian Francophonie in June 2014 specifically emphasized the importance of Francophone immigration as a key element of economic, social and cultural development of the Canadian Francophonie. On November 21, 2014, in the context of the Statement on Canadian Francophonie, the governments of Québec and Ontario asked the federal government to "act quickly in regards to Francophone immigration so that the demographic weight of Francophones is maintained all across Canada."¹⁸⁷ In this respect, several measures have been put into place in order to counter the relative decline in the use of the French language in Canada.

As a result, in matters of immigration, which is essential for the growth of Canada's French-speaking population, the federal government and some provincial governments have now set targets for Francophone immigration. In the summer of 2016, at the most recent meeting of the Council of the Federation, the premiers of the provinces and territories stated their intention to achieve a target of 5%, whereas in 2013, the percentage of French-speaking immigrants arriving in Canada stood at 1.8%. Ontario set a target of 5%, New Brunswick one of 33% and Manitoba one of 7%.

The ministers who are members of the Ministerial Conference on the Canadian Francophonie have made it a priority to increase Francophone immigration throughout the country. At the ministerial conference in June 2015 in Toronto, the provincial and territorial ministers agreed that the Conference would organize a forum attended by the federal, provincial, and territorial ministers responsible for immigration and the Canadian Francophonie, as well as by representatives of the associational sector, in order to draw up a real action plan in the area of Francophone immigration. For the first time ever, a structural measure was put forward to halt the relative decline of French in Canada. Clearly, to sustain this influx of French-speakers, Canada's French-language schools will require sufficient resources.

Today, most of the provinces and territories have adopted laws or policies in favour of French. The principle of the active offer of services in French has been broadened. For example, Ontario's *French Language Services Act*, which has been in effect since 1989, now provides that all 28 provincial government ministries must provide French-language services in 26 designated regions.

In the field of education, recent decades have been marked by the establishment of French-language and bilingual post-secondary educational institutions in Canada—for example, Université Sainte-Anne in Nova Scotia, the University of Alberta's Campus Saint-Jean, the Cité universitaire francophone in Regina, and several French-language or bilingual institutions in Ontario. Outside Québec, according to current figures, there are now 36 francophone post-secondary institutions, 700 schools and over 70 cultural and community centres.

Due to the efforts of Canadian Parents for French, an organization resulting from a citizen-based initiative, French immersion classes began to be offered and proliferated from the 1980s onwards. This movement is not only persistent, it is accelerating. Between 2007 and 2014, enrolment increased by over 25% in second-language immersion programs in Canada.

These initiatives reflect a greater openness towards French in Canada. On August 31, 2016, the Commissioner of Official Languages presented the results of a survey indicating that a strong majority of Canadians support the objectives of the *Official Languages Act*—88%

of respondents throughout Canada indeed indicated that they supported the objectives of this Act. The Commissioner concluded that: “[t]he broad support for the objectives of the *Official Languages Act* shows the extent to which attitudes have evolved,”¹⁸⁸ particularly in light of a survey conducted by Environics in 1977, which then revealed that only 51% of respondents were “personally in favour of bilingualism for all of Canada”.¹⁸⁹

The Canadian Charter of Rights and Freedoms

Quebecers have long been supportive of the protection of rights and freedoms. The National Assembly of Québec was in fact a forerunner when it passed the *Charter of Human Rights and Freedoms* in 1975.¹⁹⁰ Also, despite the events surrounding its adoption in 1982, the Canadian Charter is perceived in a positive light by Quebecers. A survey carried out twenty years after its adoption even showed that support for the *Canadian Charter of Rights and Freedoms* was stronger in Québec than elsewhere in Canada.¹⁹¹

In Québec and in the rest of Canada, the Canadian Charter has a substantial impact on the functioning of the political system. At the institutional level, the Charter has in fact given greater power to judges, particularly those of the higher courts (superior courts, courts of appeal, and the Supreme Court of Canada). The experience of recent decades has shown that the *Canadian Charter of Rights and Freedoms* has affected the powers of the Parliament of Québec, particularly in the area of the language of education.¹⁹²

It should be noted that the adoption of rights-protecting instruments that limit the action of governments is far from being unique to Canada. The protection of fundamental rights by the courts is today an indispensable characteristic of all western democracies. Thus, to cite just one example, the decisions of the European Court of Human Rights, instituted in 1959, are binding on the signatory states of the European Convention on Human Rights.¹⁹³

Moreover, the Canadian Charter has transformed federal relationships.¹⁹⁴ As the Supreme Court itself stated in the *Reference re Secession of Québec*¹⁹⁵:

[...] Martland and Ritchie JJ., [...] considered federalism to be 'the dominant principle of Canadian constitutional law'. With the enactment of the Charter, that proposition may have less force than it once did, but there can be little doubt that the principle of federalism remains a central organizational theme of our Constitution.

For example, certain issues that were previously dealt with from the angle of the division of constitutional powers are now also examined by the courts from the angle of the protection of rights and freedoms.¹⁹⁶

In addition, the Canadian Charter has had a considerable impact on relations between language groups in Canada. The *Constitution Act, 1982*, placed the language-related needs of minority English-speakers in Québec and those of the French-speaking minorities in the other provinces on the same footing, without taking into account the particular situation of the French language in Canada and in North America. As a result of this Act, by means of legal action, Francophones outside Québec have been able to gain recognition of their language rights, whether it is the right to French-language education, the right to manage their schools, the protection of judicial rights or the publication of bilingual municipal bylaws. However, the problems raised by the constitutional text, which does not distinguish between the minority French-speaking and English-speaking communities and the need to protect French in Québec, have sometimes led the Government of Québec and the Francophone and Acadian communities to defend conflicting legal positions. The Government of Québec intends to be proactive in seeking a way to reconcile these points of view.

In summary, the protection of rights and freedoms is central to Québec's democracy, and Quebecers are attached to this protection. In addition, to a certain extent, the courts interpret the *Canadian Charter of Rights and Freedoms* and the Constitution in a way that takes into account the distinctive role of Québec when it comes to protecting and promoting its Francophone character. However, given the scale of the changes introduced by the Canadian Charter, since 1982, which has stood at the top of in the hierarchy of Canadian legal norms, Québec's assent to its introduction should have been sought. For Québec, it is now essential that the interpretation of the Canadian Charter by the courts formally take its national reality into account.

An Increasing Number of Actors

Over the past thirty years, on the political and constitutional scene, an increasing number of stakeholders have appeared who also bear a “constitutional identity.”¹⁹⁷ In fact, since the passage of the *Constitution Act, 1982*, a number of groups have decided to become more engaged in the constitutional process. The Meech Lake Accord and the referendum on the Charlottetown Accord have shown the limitations of “executive” federalism and the political necessity to involve a growing number of actors in the constitutional amendment process, chief among them the Aboriginal peoples.

At the democratic level, and given the growing number of stakeholders, governments are expected to submit a multilateral constitutional amendment to the public by means of a referendum,¹⁹⁸ especially since the Charlottetown Accord. Moreover, the citizen assemblies set up in British Columbia and Ontario to propose reforms to the voting system are an example of institutional innovation that confirms a paradigm shift towards greater openness and transparency. At the international level, the trend in matters of constitutional reform also points to greater openness of the constitutional amendment processes to other stakeholders, whether through their inclusion in the discussions or through consultations of organized civil society.¹⁹⁹

The era when constitutional changes of fundamental importance for the country were discussed exclusively between first ministers, behind closed doors, is a thing of the past. Now, the emergence of a dynamic Canadian Francophonie, the increasingly assertive demands from Aboriginal peoples and the unswerving determination of Québec to affirm itself as a nation make it necessary to open a dialogue on the evolution of Canadian federalism. A dialogue that is broadened to include all concerned stakeholders is a necessary step in any undertaking to renew our federal system.

This dialogue must allow one to take into consideration the profound changes that have transformed Québec and Canada since the Meech Lake Accord, and re-establish the bond of trust that has been placed under strain in recent decades. It must also enable Canadians to work together to forge an inclusive vision of federalism respectful of collective and national identities. This vision had been gradually abandoned since the 1930s with the development of a territorial federalism that does not sufficiently recognize the different communities and nations that compose Canada.

3. QUÉBEC'S VISION

3.1 A FORM OF FEDERALISM THAT RECOGNIZES COLLECTIVE DIVERSITY

Canada was one of the very first states to adopt a federal formula, due to its plurinational reality. The choice of a federal union, 150 years ago, was not accidental—instead, it was the most suitable way to deal with plurinationality. Today, more than 40% of the world’s population lives in states that are federal in nature, most of them composed of different cultural or national groups.²⁰⁰

Current issues worldwide have led to identity withdrawal and increasing tensions in many countries. Globalization and the dynamics of economic integration, among other aspects, are used to back a growing number of demands. As a result, many minority nations are seeking new formulas that will enable them to flourish.²⁰¹ As Alain-G. Gagnon explains:

La diversité nationale qui caractérise la plupart des États contemporains n’ira pas en s’atténuant ; il faut donc imaginer les moyens de l’inscrire dans les institutions politiques, sans quoi le monde qui nous entoure deviendra de plus en plus incertain et les projets politiques de moins en moins respectueux des cultures sociétales et graduellement enclins à la coercition.²⁰²

[translation: The national diversity inherent in most contemporary states is by no means decreasing; ways therefore must be found to entrench it in political institutions, otherwise the world around us will become increasingly uncertain and political projects will become less and less respectful of societal cultures and gradually inclined towards coercion.]

Canada has all the necessary attributes to face and deal with the challenges of the 21st century, and Québec can make a positive and significant contribution to its project for the future. Quebecers can participate in shaping Canada so that it can set an example and provide a source of inspiration for the world.

The Government of Québec considers that federalism is still the most suitable political system for Canada's situation. Unlike a unitary political system, it is able to balance unity and diversity.

Quebecers can participate in shaping Canada so that it can set an example and provide a source of inspiration for the world.

Québec's contemporary vision of federalism is in keeping with Canada's history, and it is appropriate today to define what that vision is. In the opinion

of Alain-G. Gagnon, a true return to the sources of Canadian plurinational federalism (pactism, the instigation and promotion of a federal culture and federalism through treaties) "[...] *semble être la façon de poser la question de la réconciliation communautaire sur de nouvelles bases et ainsi mettre à l'épreuve de la délibération de nouveaux arrangements constitutionnels.*"²⁰³ [translation: [...] appears to be the way to raise the question of community reconciliation on a new foundation and thus put the new constitutional arrangements to the test of deliberations.]

André Burelle has also emphasized the importance of drawing from the sources of the Canadian Federation in looking towards the future, stating that: "[...] *le Canada multinational imaginé et voulu par les Pères de la Confédération canadienne m'est toujours apparu prophétique, malgré ses anachronismes incontestables et malgré nos nombreuses infidélités historiques aux idées qui lui ont donné naissance.*"²⁰⁴ [translation: [...] the multinational Canada imagined and sought by the Fathers of the Canadian Confederation has always appeared to me to be prophetic, despite its undeniable anachronisms and despite our many historical infidelities to the ideas that gave rise to its birth.]

Québec is the only predominantly French-speaking state in North America and as such, is heir to a rich and unique culture that must be protected, supported, and developed. In Québec's view, its full and

In Québec's view, the affirmation of its national character and its acceptance by Canada are closely linked to the basic ideal of federalism.

complete participation in Canada must inevitably lead towards concrete and meaningful recognition of this fact. In this way, the twofold sense of belonging of Quebecers will be strongly and legitimately anchored in a space where the interests of the national communities are taken into consideration.

On several occasions during the last 150 years, the Government of Québec has stated a vision of federalism that makes it possible for it to affirm its national identity while participating in Canada. This vision is supported by history, and also by contemporary political thought, which sees federalism as the best way to manage the cohabitation of various national communities within a single state.²⁰⁵

Over time, in its intergovernmental relations, Québec has developed a vision of Canada based on a certain number of principles:

- Recognition of the Québec nation;
- Respect for Québec’s areas of jurisdiction;
- Autonomy;
- Flexibility and asymmetry;
- Cooperation and administrative agreements;
- Shared institutions.

The Government of Québec has consistently defended these principles. Today, Québec reiterates the principal means by which it intends to ensure its national affirmation and respect for its legislative powers.

In the early 1990s, Charles Taylor emphasized the need to forge—or consolidate—a feeling of common citizenship within the state, “that is, a common understanding of what it is to be a member of this society, which must include [...] the equality and autonomy of all citizens.”²⁰⁶ In this regard, he was already calling for a Canadian Federation in which “[...] there was more than one formula for citizenship and where we could live with the fact that different people related to different formulae.”²⁰⁷

For Quebeckers, and for most French Canadians, the way of being a Canadian (for those who still want to be) is by their belonging to a constituent element of Canada, la nation québécoise or canadienne-française. Something analogous holds for aboriginal communities in this country; their way of being Canadian is not accommodated by first-level diversity. Yet many people in COQ [Canada outside Québec] are puzzled by the resulting sense of exclusion, because first-level diversity is the only kind to which they are sensitive and which they feel they fully acknowledge.

To build a country for everyone, Canada would have to allow for second-level or “deep” diversity, in which a plurality of ways of belonging would also be acknowledged and accepted.²⁰⁸

In Québec’s view, the affirmation of its national character and its acceptance by Canada are closely linked to the basic ideal of federalism. A process to ensure the recognition of national identities appears to be the natural end result of the Canadian project, aiming, on the one hand, to recognize the collective identity of the Québec nation, but also, on the other hand, to give the French language its rightful place in Canada.

3.2 RECOGNITION OF THE QUÉBEC NATION

For the Government of Québec, the Québec nation is not limited to its reality as a predominantly French-speaking society in North America. The Québec nation includes all the people living in Québec. It includes, in particular, Québec’s English-speaking community, which has certain specific rights and prerogatives. It also recognizes eleven Aboriginal nations. The Québec nation is committed to the values of democracy, openness and inclusion. It values plural belongings. This inclusive and plural nation has existed for more than four hundred years.

The recognition of Québec’s nationhood appears as the main guiding principle in Québec’s political and constitutional history.

The recognition of Québec’s nationhood appears as the main guiding principle in Québec’s political and constitutional history. Diane Wilhelmy, an important figure in the constitutional negotiations in the 1980s and 1990s, summarized the situation as follows:

L’absence de consensus sur la composition des communautés nationales est la principale cause de nos difficultés constitutionnelles. S’il est important pour le Québec que le Canada le reconnaisse comme société distincte, ce n’est pas tant pour enchâsser dans la Constitution une simple évidence, mais bien pour obtenir la garantie que le régime politique canadien ne puisse fonctionner de manière à nier la réalité historique, sociologique et culturelle de son caractère distinct. Il ne s’agit pas non plus pour le Québec de faire triompher quelque droit collectif indéfini sur les droits individuels, mais plutôt de voir à ce que notre régime de protection des droits et libertés tienne justement compte du droit des Québécois à posséder et promouvoir une identité, une appartenance collective différente de celle du reste du Canada.²⁰⁹

[translation: The lack of a consensus on the composition of the national communities is the main cause of our constitutional difficulties. While it is important for Québec that Canada recognize it as a distinct society, it is not so much in order to entrench an obvious fact in the Constitution, but rather to obtain the guarantee that the Canadian political system cannot function in such a way as to deny the historical, sociological and cultural reality of its distinct character; nor does Québec seek to secure a victory for an undefined collective right over individual rights, but rather to ensure that our system for protecting rights and freedoms takes due account of the right of Quebecers to possess and promote an identity, a collective belonging that is different from that of the rest of Canada.]

The need to gain recognition for the Québec nation has become more pressing over time, particularly with the development of the Québec state. This need is primarily due to the fact that the constitutional rules, especially the rules dealing with the division of powers, have not followed the evolution of the Canadian Federation. While the federal compromise was at first relatively consistent with the French-Canadian national reality of the time, the failure to take into account Québec's national reality in contemporary constitutional developments has been the main source of the difficulties experienced by Québec in fully adhering to Canada.

The ongoing process of affirmation and recognition of the Québec nation has not always been understood, or well perceived, by Québec's federative partners and by the Canadian population. Indeed, in Canada, it is frequently thought that a country is necessarily formed by a single nation and that this is an essential condition for maintaining Canadian unity. Historically, as seen above, authors in favour of this vision, such as Norman Rogers and Donald Creighton, have contributed through their writing to a marginalization of the concept of a compact between nations, which is fundamental to Quebecers. This univocal vision of Canada triumphed at the patriation of the Constitution in 1982, increasing the distance between Quebecers and the Canada to which they are attached.

This approach has now clearly demonstrated its limitations. It is now time to work towards re-establishing what Quebecers have called for since 1867, when they referred to themselves as French-Canadians, namely a Canada that fully recognizes them for what they are. As Arend Lijphart once stated, the negation of a nation within a greater ensemble can only foster division and, ultimately, undermine national cohesion.²¹⁰ To Guy Laforest, “*[l]e nationalisme majoritaire canadien s’enferme dans un mythe [...] lorsqu’il s’imagine que l’on peut, en ce pays, occulter la profonde aliénation politique, l’exil intérieur des Québécois.*”²¹¹ [translation: (t)he Canadian majority nationalism is dwelling in a myth [...] when it imagines that it is possible, in this country, to conceal the profound political alienation, the internal exile of Quebecers.]

It is possible and even advisable for Canada to provide suitable recognition for the Québec nation and the Aboriginal nations without calling into question its unity or its ability to develop. Canada has indeed already “*élevé la diversité au rang de valeur nationale.*”²¹² [translation:

raised diversity to the rank of a national value.] In addition, Canadians are open to the idea of a country in which diversity is the norm. This can and must include profound diversity, such as that

There is no doubt that throughout its history, Canada has in fact been a plurinational federation.

evoked by Charles Taylor, namely the acceptance of a plurality of belongings. To Will Kymlicka, and to many other authors, there is no doubt that throughout its history, Canada has in fact been a plurinational federation:

Canada’s historical development has involved the federation of three distinct national groups (English, French and Aboriginals). The original incorporation of the French Canadian and Aboriginal communities into the Canadian political community was involuntary. Indian homelands were overrun by French settlers, who were then conquered by the English. While the possibility of secession is very real for the Québécois, the historical preference of these groups—as with the national minorities in the United States—has not been to leave the federation, but to renegotiate the terms of federation, so as to increase their autonomy within it.

Many of the pivotal movements in Canadian history have centred on these attempts to renegotiate the terms of federation between English, French and Aboriginals²¹³.

Recognition of Québec's national reality, and its eventual entrenchment in the Constitution, would represent for Québec the expression of a fundamental respect, the cornerstone upon which trust and cooperation may be built.

These national identities predate the Canadian state and still define it today in its most fundamental aspects.

Recognition of Québec's national reality by all federative partners, and its eventual entrenchment in the Constitution, would represent for Québec an expression of

fundamental respect, a cornerstone upon which trust and cooperation may be built in a federation that has existed for 150 years.

Québec and Canadian Diversity

In the view of the Government of Québec, recognition of the Québec nation goes hand in hand with recognition that this national reality was one of the reasons for the original federative compromise. Historically this vision has exerted a structuring force in managing the coexistence of different nations within one state, enabling them to avoid an overly standardizing path contrary to the principle of federalism.

One hundred and fifty years ago, for French Canadians, federalism was the formula most likely to guarantee the free expression of their identity while allowing their participation in a continent-wide project to build a country stretching from sea to sea. However, this vision of federalism is not the only one to have emerged in the course of history. In reality, two conceptions of federalism have coexisted in Canada since 1867, namely territorial federalism and dual or plurinational federalism.²¹⁴

Territorial federalism, first, sees the political system as an institutional formula through which it is possible to balance the benefits arising from centralization and decentralization to obtain the greatest efficiency.²¹⁵ The principle of formal equality of the provinces flows from this vision.

Dual or plurinational federalism, on the other hand, has historically been promoted by Québec and by the Francophones as a federal compact. This conception of federalism has deep historical roots, since it was in fact at the core of the *Quebec Act, 1774*. Dual or plurinational federalism supports the existence of asymmetries based on national belonging.²¹⁶ These asymmetries make it possible to achieve true equality of the provinces where formal equality fails to do so.

This idea of the federal compact was broadly shared in Canada during the first 50 years of its existence. However, it has now become controversial outside Québec.²¹⁷ Notwithstanding the *Constitution Act, 1867* still reflects this idea to a certain extent. The founders of the Federation recognized in section 94 the specificity of the civil law system in Québec, and arranged to protect it from federal actions to standardize the common law in the area of property and civil rights throughout the Federation. In addition, the division of legislative powers enabled the Québec state to have at its disposal the main tools needed for its development.

More recently, this vision of federalism underlies the *Official Languages Act* passed by the federal Parliament in 1969. It was expressed forcefully by André Laurendeau and Arnold Davidson Dunton in the report of the Royal Commission on Bilingualism and Biculturalism. The defence of institutional bilingualism in the federal government and of the Francophone presence across Canada remains strongly anchored in this vision of a fundamental duality of the Canadian identity.

The recognition of Québec's national character is also closely linked to this vision of a compact, since it is fundamentally based on distinct national sentiments that coexisted before 1867 and that account for the adoption of the federal model. However, the concepts of dualism and compact between nations have evolved. Indeed, the notion of founding peoples has changed over recent years in view of the increasingly assertive claims of the Aboriginal peoples. According to Sébastien Grammond, this evolution of the compact theory is reflected in particular in the jurisprudence of the Supreme Court of Canada.

This use of the compact metaphor in different contexts suggests that Canada is a complex country with more than one underlying compact. Accommodating different political communities within the country may require different types of arrangements. Thus, the fact that the language of compact has been used to describe the union of pre-existing colonies as well as the coexistence of Francophones and Anglophones is not evidence of inconsistency, but rather proof of the pervasiveness of the idea of consensual political association.²¹⁸

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Québec intends to reiterate, whenever appropriate, that it has always considered its participation in and contribution to the Federation to have as their overriding source a national identity that predates the Canadian state.

have as their overriding source a national identity that predates the Canadian state. The idea of a compact between nations has no doubt evolved, but it remains fundamental to an understanding of Québec's vision of federalism, a vision that supports the principles guiding its Canadian relations.

the vital role of the French language in the Canadian identity. This recognition is fundamental to the ability of every Canadian citizen who wishes to speak French, regardless of his or her location in the country,

The development of the Francophone space will provide Quebecers with an echo of their identity that will enable them to feel at home everywhere in Canada.

Today, still drawing inspiration from this vision, Québec reaffirms the importance of recognizing its national character, and to do so while being confident that this is also a way of being Canadian. A greater awareness of the unique role of the French language, as well as its defence and promotion across the country, would consolidate our historic and natural connection with our fellow Francophone and Francophile citizens.

The development of the Francophone space will provide Quebecers with an echo of their identity that will enable them to feel at home everywhere in Canada.

The Québec Nation and International Relations

Québec's national reality has allowed it to forge an autonomous international presence, in particular on the basis of the Gérin-Lajoie doctrine, according to which the Government of Québec has the capacity to negotiate, sign and implement international agreements in the areas under its jurisdiction within the Canadian constitutional framework. As Premier Jean Charest stated in 2004,

[]orsque le gouvernement du Québec est le seul gouvernement compétent pour appliquer un engagement international, il est normal qu'il soit celui qui prenne cet engagement. Il revient au Québec d'assumer, sur le plan international, le prolongement de ses compétences internes. [...] En d'autres mots, ce qui est de compétence québécoise chez nous est de compétence québécoise partout.²¹⁹

[translation: [w]hen the Government of Québec is the only government with jurisdiction to carry out an international commitment, it is normal that it be the one making that commitment. It is up to Québec to take charge of the extension of its areas of internal jurisdiction at the international level. [...] In other words, whatever is under Québec's jurisdiction at home is under Québec's jurisdiction everywhere.]

Québec has been asserting its presence on the international scene for more than half a century. Today, it has a wide network of 26 delegations around the world, including delegations with shared occupation in Canada's representations in China and India, as well as within Canada's permanent delegation to UNESCO. It has signed over 750 international agreements with nearly 80 foreign states. Québec is a full member of the Organisation internationale de la Francophonie.

This international presence has, however, been fought for fiercely over the course of history. It has been established on a case-by-case basis, depending on the personalities in place as well as the ups and downs of the situation and events, and has not always benefited from the federal government support and recognition for which Québec would have hoped.

The affirmation of the legitimacy of Québec's international action has nevertheless continued, as reflected in the signing of an agreement on May 5, 2006 between the Government of Québec and the Government of Canada, allowing Québec from that point on to have a representative within Canada's permanent delegation to UNESCO. This agreement formalizes the federal government's recognition of the legitimate role exercised by Québec at the international level. Moreover, for the first time, it confirms the right of the Government of Québec to make its voice heard within an organization of the United Nations. Recently, Québec was invited to use the forum available to it at UNESCO to present its unique model to counter youth radicalization.

In October 2016, just before the nineteenth Alternating Meeting of the Premier of Québec and the Prime Minister of France, the Prime Minister of Canada recognized the importance and legitimacy of Québec's international voice. Acknowledging the work of the Government of Québec in negotiating the *Comprehensive Economic and Trade Agreement between Canada and the European Union*, Prime Minister Justin Trudeau stated that it constituted "*un exemple de ce que la présence diplomatique du Québec sur la scène internationale peut accomplir pour non seulement renforcer la réputation de la province à l'étranger, mais aussi celle du Canada.*" [translation: an example of what Québec's diplomatic presence on the international scene can accomplish to strengthen not only the province's reputation abroad, but also that of Canada.] He also recognized that "*le Québec entretient une relation unique, directe et privilégiée avec la France.*" [translation: Québec maintains a unique, direct, and privileged relationship with France.]

For Québec, it is now essential to develop fair, functional, and foreseeable rules allowing the participation of federated entities on the international stage. This does not involve questioning Canada's foreign policy. On the contrary, to the extent that the collaboration of the provinces is often necessary for the implementation of treaties signed by Canada, cooperation with the provinces and the presence of provincial representatives and experts at negotiations will help strengthen rather than weaken Canada's international action.

In the free-trade negotiations between Canada and the European Union, the provinces and territories requested and obtained that the federal government formulate in writing a process to guarantee their direct participation in the negotiations, which constitutes a major precedent consistent with Québec's traditional demands. The Government of Québec intends to continue working actively towards a general framework for the province's participation in international negotiations affecting their areas of jurisdiction. The renewal of the Softwood Lumber Agreement with the United States is a perfect illustration of the need to establish such a framework, since any discussion surrounding the forestry system concerns above all the lumber-exporting provinces.

Furthermore, as regards the *North American Free Trade Agreement* (NAFTA), Québec is working closely with the federal government to organize and deploy a diplomatic offensive within the United States to build an understanding of the importance of the economic interdependence between the United States and Canada. Negotiations are being planned, and discussions are continuing with Ontario and certain other provinces in order to define the framework for participation by the provinces.

3.3 RESPECT FOR QUÉBEC'S AREAS OF JURISDICTION

As a nation, Québec will always be concerned about the ongoing vitality of its language and culture. A viable state, with its own institutions, strengthens the ability of the Québec nation to achieve its full potential.

Historically, Québec has made a constant effort not only to ensure respect for its legislative powers, but also to keep them up-to-date and relevant despite the profound changes that have occurred since 1867. The challenges facing Québec are of several kinds and affect citizens unequally. Their importance must not, however, be underestimated. This is why the Government of Québec continues on a day-to-day basis to seek creative and constructive solutions to meet these challenges.

In the course of history, court decisions have clarified the scope of Québec's areas of jurisdiction arising out of the division of powers. However, the federal government frequently intervenes directly in areas which, from the constitutional viewpoint, are under the exclusive jurisdiction of the provinces. The federal government's recent and even calculated attempt, in the area of banking, to unilaterally set aside Québec's consumer protection legislation, a key piece of legislation in our civil law system, is a good illustration of this.

On a day-to-day basis, federal-provincial relations present challenges, attempts at infringement, and sometimes confrontations, which place Québec in a position where constant vigilance is required to protect the interests of its citizens.

The recurrent problem, in recent years, of private aerodromes built in Québec with no regard for the zoning bylaws or the concerns of citizens and municipalities, or the difficulty experienced by the Government of Québec in ensuring compliance with its environmental standards for port activities, highlight the disadvantage of "wall to wall" policies that fail to take local realities, or the laws adopted by the provinces in the interest of their citizens, into account.

3.4 AUTONOMY

In the absence of constitutional powers that would allow it to act directly, it is often by means of financial interventions that the federal government interferes in areas of provincial jurisdiction. This “federal spending power,” which has developed on the margins of the Constitution, is now exercised outside any framework and often without regard for the division of constitutional powers. However, the division of powers is central to the Canadian federal compromise

The division of powers is central to the Canadian federal compromise and, especially for Québec, represents the strongest guarantee for the continuity and flourishing of its national identity.

and, especially for Québec, represents the strongest guarantee for the continuity and flourishing of its national identity. Québec’s national reality indeed creates particular responsibilities for the Québec state, in areas related to its identity, as well as in the powers granted to it by the Constitution, particularly in matters of health, education, municipal affairs and land development and, in general, matters of social policy. These particular responsibilities also take shape through the extension of these powers at the international level. In this area, Québec has always been vigilant and has been careful to maintain its ability to develop and implement policies, programs and interventions that fulfill the needs of its society.

The importance Québec places on the ability to exercise its responsibilities without interference explains why it sometimes demands more freedom to act than its federative partners. This freedom is inherent in the existence of the Québec nation within the Canadian constitutional framework. In no case is Québec demanding powers or extra financial resources that are not available to the other provinces—it is simply ensuring the ongoing viability of its national identity. This is also why, historically, Québec has always sought to clarify the limits that apply to the federal government’s financial interventions in Québec’s areas of jurisdiction. Québec has always refused to recognize the existence of a federal spending power not subject to the limitations of the division of powers.

This is also why Québec demands, when appropriate, the ability to opt out of a pan-Canadian initiative with reasonable compensation, ensuring that it will be able to exercise its own powers freely. Given the fiscal imbalance, opting out with compensation is an effective way of ensuring balance between the orders of government, an essential aspect of the federal principle.

History has shown that in Canada, the division of fiscal resources between the two orders of government is not proportional to the division of constitutional responsibilities.²²⁰ However, the ability of governments to exercise their powers, and thus to make choices and set their priorities, relies on their fiscal autonomy. This autonomy is part of our constitutional system.

By conferring autonomous fiscal powers on the two orders of government, often relating to the same tax bases, the Constitution postulated that each government would finance the exercise of its own competences.²²¹

In contrast, fiscal centralization leads to the centralization of political choices: "*le partage des ressources financières concerne d'abord et avant tout le principe d'autonomie.*"²²² [translation: the division of financial resources concerns first and foremost the principle of autonomy.] The classical definitions of federalism, such as those of Daniel J. Elazar or Kenneth C. Wheare, emphasize this principle of the autonomy of the parties and its consequence, namely that each order of government must have financial resources to exercise its duties.²²³

Other experts on federalism, such as Raoul Blindenbacher and Ronald L. Watts, also state that sources of revenue must be fairly distributed to allow governments to exercise their authority in their recognized sectors.²²⁴ These principles of fiscal autonomy have been stated by the Royal Commission of Inquiry on Constitutional Problems (the Tremblay Commission):

*Dans un État fédératif, toutes les parties constituantes doivent pouvoir, de leur propre initiative et sous leur propre responsabilité, se procurer par l'impôt les ressources financières nécessaires à l'exercice de leurs compétences respectives, sans quoi le régime perd son caractère fédératif.*²²⁵

[translation: In a federal state, all the constituent parties must be able, on their own initiative and under their own responsibility, to obtain through taxation the financial resources necessary to exercise their respective powers, failing which the system loses its federal nature.]

Thus, a federal system is distinguished from other systems by the fiscal autonomy of the orders of government. However, the issue of the vertical fiscal imbalance continues to be raised in the Canadian federal system. The provinces currently assume responsibility for social programs, the costs of which are increasing more rapidly than their autonomous revenues, whereas the federal government intervenes in various areas of provincial jurisdiction through its “federal spending power.” This situation has been the underlying theme of many demands and tensions in the area of fiscal federalism. In the fourth chapter of its report published in March 2002, the Commission on Fiscal Imbalance identified federal spending power as one of the main causes and consequences of the fiscal imbalance between the federal government and the provinces.²²⁶

A concrete illustration of the consequences of this imbalance was the unilateral announcement by the federal government in 2011 that the 6% annual increase of the Canada Health Transfer (CHT) would be reduced, beginning in 2016-2017, to the growth level of the nominal Canadian GDP, subject to a floor of 3%. In December 2016, the government of Justin Trudeau decided to maintain these new terms which, over a ten-year period, represent a decrease in financing that could total over \$60 billion, including \$13.7 billion for Québec.

When the federal government carries out the renewal of its transfers, generally with a view to slowing their growth, it most often acts unilaterally, excluding the provinces and territories from the discussions. Yet federal transfers assist in financing missions related to their areas of jurisdiction.

By limiting the increase of its transfers over the past several years, the federal government has been ensuring its own financial viability to the detriment of that of the provinces. The Parliamentary Budget Officer (PBO), among others, has supported this observation in several reports published since 2011. In June 2016, the PBO concluded that although the federal government announced a budget deficit for the coming years to fund its recovery measures, its debt is following a viable trajectory and will be completely eliminated in 50 years. Conversely, the debt of the provinces and territories will not be viable, and will continue to grow, particularly due to the continuing increases in health spending.²²⁷

3.5 FLEXIBILITY AND ASYMMETRY

Recognition of the Québec nation should help promote the idea of a flexible, asymmetric form of federalism in Canada. The federal ideal would thus come into full force:

De fait, dans ce qu'elle a de classique, la formule fédérale se caractérise par sa souplesse et son adaptabilité, elles-mêmes indissociables du concept d'asymétrie. Elle repose sur la diversité des entités fédérées qui la composent, sur leur capacité de mettre en lumière leur originalité et sur leur droit intrinsèque de promouvoir leur différence.²²⁸

[translation: In fact, in its classical aspects, the federal formula is characterized by its flexibility and its adaptability, which themselves are inseparable from the concept of asymmetry. It is based on the diversity of the federated entities that it comprises, on their capacity to display their originality and on their intrinsic right to promote their difference.]

In contemporary political thought, asymmetric federalism is often referred to as the most preferable institutional solution within federal states where different national realities coexist.²²⁹ As stated above, the quest for asymmetry is not incompatible with the concept of equality between the provinces. Again, it is worthwhile to recall the words of Charles Taylor:

It could be argued that Quebec needs powers that other provinces do not, to cope with problems and a vocation that other provinces do not have. Accordingly, this point could be seen as a move towards equality (to each province according to its tasks), not away from it.²³⁰

By taking into account the reality of a minority nation, asymmetry offers a way to establish balance and fairness, rather than an unfair privilege.²³¹ This is particularly relevant to the situation of Québec, which is the only majority Francophone state among the provinces of the Canadian

Federation, and therefore has a clear responsibility for the affirmation of Quebecers, who constitute a minority demographically (23%

Asymmetric federalism is often referred to as the most preferable institutional solution within federal states where different national realities coexist.

of the population), politically (one province among ten), and linguistically, in overwhelmingly English-speaking Canada and North America.

It is also essential for Québec, as often as necessary, to explain and reiterate that recognition for the Québec nation

gives it the tools it needs to preserve its specific characteristics. However, it is clear that this recognition, as well as the related asymmetry, must not be perceived as a privilege or a systematic practice. In 1998, Jane Jenson rightly stated that "*[p]our progresser en direction d'un partenariat fédéral asymétrique, nous devons développer la compréhension réciproque, par un dialogue démocratique et un*

travail politique assidu."²³² [translation: [t]o progress in the direction of an asymmetrical federal partnership, we must develop mutual understanding, through democratic dialogue and hard political work.]

By taking into account the reality of a minority nation, asymmetry offers a way to establish balance and fairness, rather than an unfair privilege.

The federal formula, like the Constitution itself, already accepts asymmetry regarding the relations between the federative partners.²³³ In political and constitutional history, the provinces have benefited from asymmetric solutions, particularly when Prince Edward Island, British Columbia and Newfoundland entered the Federation.²³⁴ This federalism, traces of which are even found in the Constitution of 1867, is a flexible federalism capable of adapting to the reality of Quebecers. In 1992, Gil Rémillard, Minister of Justice and Minister responsible for Canadian Intergovernmental Affairs in the government led by Robert Bourassa, stated:

*Asymétrie et fédéralisme sont compatibles. [...] l'asymétrie peut être un moyen important pour établir un partage des compétences susceptible de satisfaire à la fois le Québec et les autres provinces, tout en consolidant les assises du gouvernement fédéral à l'égard de ses responsabilités nationales.*²³⁵

[translation: Asymmetry and federalism are compatible. [...] asymmetry may be an important means of establishing a division of powers likely to satisfy both Québec and the other provinces, while consolidating the foundations of the federal government in regard to its national responsibilities.]

History is indeed rich in examples of arrangements that Québec has been able to establish within the Canadian framework. These arrangements illustrate the concrete and ongoing affirmation of the distinct character of Québec over time. The creation of the Québec Pension Plan in 1964, the establishment of the Société générale de financement and of the Caisse de dépôt et de placement du Québec, the autonomy granted to Québec over immigration, the language policies supporting the continuity of French, or the more recent administrative agreements, are all strong illustrations of Canada's ability to agree with Québec to modify the governance practices of Canadian federalism when Québec's identity and powers are at stake.

This course of historical events is strewn with failures and successes, but the high degree of prosperity and freedom that Québec now enjoys, as well as the strength of its identity and culture, in themselves testify to the positive nature of its inclusion in Canada. History demonstrates that federalism can adapt itself to Québec's national reality.

Asymmetric federalism makes it possible to pursue shared objectives while respecting Québec's priorities and methods. It is not a tool used to dissociate Québec from the other provinces, but a flexible approach that facilitates Québec's involvement in shared projects. Recognition of the Québec nation must be considered from a practical perspective, producing its effects by relying on the fact that Canada's asymmetry constitutes a means of facilitating the coexistence of nations within the Federation.

Asymmetric federalism makes it possible to pursue shared objectives while respecting Québec's priorities and methods. It is not a tool used to dissociate Québec from the other provinces, but a flexible approach that facilitates Québec's involvement in shared projects.

3.6 COOPERATION AND ADMINISTRATIVE AGREEMENTS

In recent years, Canadian relations have been influenced by the emergence of intergovernmental practices in which federal and provincial powers are increasingly interwoven. For example, in 2015-2016 alone, Québec was a party to 62 intergovernmental agreements. Over the past 15 years, some major intergovernmental agreements have indeed been signed. Apart from those already mentioned (asymmetrical agreements on health, labour, parental leave, UNESCO), others include the *Accord between the Government of Canada and the Government of Quebec for the shared management of petroleum resources in the Gulf of St. Lawrence (Old Harry)*, the *Comprehensive Integrated Tax Coordination Agreement between the Government of Canada and the Government of Quebec*, the new *Canadian Free Trade Agreement*, concluded on April 7, 2017 as well as Québec-Ontario agreements on electricity, trade and cooperation, and the fight against climate change.

This series of events is a contemporary manifestation of cooperative federalism. A growing number of intergovernmental agreements allow the two orders of government to coordinate their actions and cooperate effectively on issues affecting their respective interests. This flexible way of conducting Canadian relations, in a context in which they are continually growing and becoming increasingly complex, reflects the capacity of Canadian federalism to adapt to the current reality.

Although governments follow the recommendations of Supreme Court jurisprudence in favouring an approach which fosters a cooperative federalism, the country's highest court recently repeated that the principle of federalism also requires that a balance be maintained between the federal powers and those of the provinces and that "[t]he 'dominant tide' of flexible federalism, however strong its pull may be, cannot sweep designated powers out to sea, nor erode the constitutional balance inherent in the Canadian federal state."²³⁶

Cooperative federalism must not be used as a pretext to push aside the division of powers, as the federal government is currently trying to do in the area of securities. After having seen its attempt at centralizing securities regulation overturned by the courts, the federal government is now trying to arrive at the same result under the cover of a cooperative system. The Government of Québec and the National Assembly expressed their strong opposition to the centralizing aims of the federal government when it announced its plans to regulate securities, and Québec fully exercises its constitutional powers in this field. For this reason, the Government of Québec decided to challenge the constitutional validity of the new federal initiative by referring the matter to the Québec Court of Appeal.

Québec must also remain vigilant and show continuing determination to maintain the balance between the respective powers of the two orders of government, as the temptation to centralize is always present in our federal system. When this temptation gives rise to an increasing number of federal initiatives in areas that are simultaneously occupied by Québec, the resulting overlap of federal and provincial powers sometimes poses a considerable challenge to the Québec state's autonomy, identity and relations with the federal government.²³⁷

In recent years, certain issues involving Québec's ability to manage its territory in the collective interest of its citizens have more specifically illustrated the importance of these challenges. The development and operation of aerodromes, waterways management, pipeline development, intensification of port activities in urban areas and the installation of telecommunication antennas are all examples of activities that have been carried out at various times by circumventing the legislation of Québec, the aim of which is to protect the health of its citizens and the environment, and thus to ensure the proper management of its territory. Yet these activities have a substantial impact on local populations.

Québec believes that cooperative federalism must foster better joint management when there is an overlapping of powers. Today, it is necessary to reinvent the methods used to work towards joint solutions, for example in connection with environmental protection or land management. Québec will spare no effort to ensure respect for its choices and legislation. It will also continue to ensure that the

legitimate concerns of its citizens are taken into account, in a spirit of dialogue and cooperation, when projects are carried out in a unilateral fashion in its territory in situations where the jurisdiction of the two orders of government overlap.

The need to develop new approaches to land management and development is also evident in Northern Québec, along its northern boundary. This boundary, which extends over 3,000 km, follows the shoreline of James Bay, Hudson Bay, Ungava Bay and Hudson Strait. More specifically, the territory of Québec, along this border, is at the low water mark. This means that currently, economic projects (energy, telecommunication and mining operations) and maritime infrastructures along the boundary could

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Cooperative federalism must foster better joint management when there is an overlapping of powers. Today, it is necessary to reinvent the methods used to work towards joint solutions, for example in connection with environmental protection or land management.

.....

simultaneously be subject to the authority of several governments, without there being any coherent and systematic intergovernmental mechanism to govern this particular situation. The consequences of this state of affairs have long been felt, and now that the North is developing rapidly, tend to affect Québec directly. It goes without saying that the discussions concerning this specific situation must above all include the Crees and the Inuit who occupy these lands and who have concluded treaties to settle their comprehensive land claims, including the *James Bay and Northern Québec Agreement* and agreements covering the adjacent marine area. From this point of view, the Aboriginal peoples become essential stakeholders in the quest for innovative solutions to facilitate the development and protection of Québec's northern lands.

New innovative approaches must be found to solve these problems of federalism. As stated by André Burelle:

Gérer les chevauchements de rôles et de responsabilités de leurs deux ordres de gouvernement, dans le respect des principes fédéraux de subsidiarité et de non-subordination, représente un défi pour tous les pays fédéraux à notre époque de mondialisation envahissante. Mais ce défi revêt une urgence particulière dans le cas d'une fédération multinationale comme la nôtre, obligée par contrat social de demeurer décentralisée pour respecter le droit à la différence de ses communautés fondatrices.²³⁸

[translation: Managing the overlapping of the roles and responsibilities of their two orders of government, in a manner consistent with federal principles of subsidiarity and non-subordination, constitutes a challenge for all federal countries in our era of rampant globalization. However, this challenge becomes particularly urgent in the case of a multinational federation such as ours, which is bound by a social contract to remain decentralized in order to respect the right of its founding communities to be different.]

At the 150th anniversary of the Federation, it is necessary once again to define common objectives and processes based on respect and cooperation between governments. This involves going beyond points of disagreement to find creative solutions that will make it possible to deal with the new challenges relating to Québec's place within Canada.

3.7 SHARED INSTITUTIONS

The 1867 federative compromise resulted in a federal institutional structure that took into account Québec's concerns. Québec's national reality is reflected in three main federal institutions, namely the House of Commons, the Senate and the Supreme Court of Canada, and Québec intends to continue to protect its influence and political weight in these bodies.

In recent years, Québec has vigorously defended before the courts its vision of the influence of the provinces in decisions affecting federal institutions. Indeed, the courts have adopted the viewpoint advocated by Québec, particularly regarding the Senate. In their respective decisions concerning the Senate (2013 and 2014), both the Québec Court of Appeal and the Supreme Court of Canada reiterated that the Senate is undeniably one of the fundamental components of the 1867 federative compromise and is the result of a consensus between the federal government and the provinces.²³⁹ Thus, in exchange for representation based on population in the House of Commons, Québec and the Maritime provinces obtained equal representation of the regions in the Senate. This guaranteed them substantial representation within federal institutions²⁴⁰ and ensured that the Senate served as a counterweight to the Lower House.

Since the 1960s, Québec has generally considered Senate reform within the broader framework of constitutional reform. This is due to the fact that Senate reform is closely linked to the issue of Québec's weight within the House of Commons. Currently, given the less important role played by the Senate compared to the one contemplated in 1867, any decrease in Québec's representation in the House of Commons means, for Québec, a decrease of its influence in the federal governance system. For this reason, Québec has maintained that if federal institutions are to be reformed, such a reform should increase the provinces' participation in the process leading to the appointment of senators, and ensure true representation of the provinces within that institution.²⁴¹ This approach in fact prevailed between 1987 and 1990, when Prime Minister Brian Mulroney recommended the appointment of four Québec senators chosen from a list of candidates submitted by the Government of Québec, then led by Robert Bourassa.

The position defended by Québec is simple and deeply rooted in constitutional history: federal institutions are at the core of federal governance and central to a federation that Québec has helped to build.

The federal government recently initiated an administrative process to enable the Prime Minister to receive suggestions from an independent selection committee when exercising his or her discretionary power to recommend the appointment of senators to the Governor General. Québec was not consulted on this process by the federal government prior to its adoption and therefore expressed its point of view, but to no avail. These pitfalls in the dialogue about federal institutions could be avoided if all parties kept in mind the federal spirit that prevailed among the partners at the time of the birth of the Federation.

Various scenarios have been proposed for the Senate, ranging from *status quo* to abolition. Québec has always believed that consideration for the interests of the provinces and regions should be at the heart of federal governance. The Senate was expected to play this role, but has been unable to do so. Québec is in favour of a forum that reflects the collective diversity of Canada, the national diversity of Québec and the First Nations and the Inuit, and the community diversity of the Acadians and the Canadian Francophonie.

The position defended by Québec is simple and deeply rooted in constitutional history: federal institutions are at the core of federal governance and central to a federation that Québec has helped to build. Québec's voice in federal institutions is important, since decisions made there have profound impacts in many fields of activities. The reform of federal institutions must be discussed. Consideration for the point of view of all the federative partners must be a key objective.

The same is true of the Supreme Court of Canada. Despite its assigned role as final constitutional arbiter, the appointment of its judges depends exclusively on the federal executive, and proceeds without any formal role for the provinces.²⁴² This situation raises questions, because respect for the principles of federalism presupposes the existence of a body responsible for arbitrating federative disputes, with judges selected under a process reflecting the equality of status between the two orders of government in Canada.

Aux fins de la préservation de sa légitimité fédérative, la grande importance du rôle joué par la Cour suprême en matière fédérative appellerait normalement l'existence de solides garanties d'indépendance et d'impartialité au plan institutionnel. Or, la plus haute cour canadienne souffre [...] d'un déficit à ce chapitre, notamment et en particulier au plan du processus de désignation de ses membres.²⁴³

[translation: To preserve its federal legitimacy, the great importance of the role played by the Supreme Court in federal matters would normally call for the existence of strong guarantees of independence and impartiality from an institutional viewpoint. Yet Canada's highest court has [...] a deficit in this regard, particularly with respect to the process for the appointment of its members.]

To guarantee the independence and neutrality of the Supreme Court of Canada as part of the Canadian federal framework, the process for appointing judges should provide for the formal participation of the provinces. As far as the appointment of the three judges from Québec is concerned, this would involve the federal government proceeding with the appointment by selecting the candidate from a list established through a process in which the Government of Québec plays a determining role. Participation by Québec in this appointment process would reinforce the Court's legitimacy and protect the specificity of our civil law legal tradition, two concerns central to the compromise that led to the guarantee of three seats reserved for Québec on the Supreme Court.

As mentioned above, in August 2016, the government led by Justin Trudeau introduced a new process for the appointment of Supreme Court justices intended to be less partisan and more transparent. For the appointment of the three judges from Québec, the federal government also undertook to make adjustments to the selection committee to take into account the civil law tradition. Québec has responded favourably to this further manifestation of asymmetry that will enable it to take its rightful place within the Canadian Federation.

3.8 A NECESSARY CONVERSATION

In order for Canada to progress towards greater recognition of the nations that compose it, the vision presented in this policy must be affirmed, understood and discussed. To accomplish this, Québec invites all citizens and its federative partners to engage in a new dialogue. The goal of this dialogue is to arrive at a common understanding of the basic elements that Québec wishes one day to see formally integrated in the Constitution. However, the improvement of our federative relations must not be reduced to a mere timeline, but must be based on affirmation, action and openness to others.

As mentioned above, the five conditions formulated in connection with the Meech Lake Accord as the prerequisites for Québec's adherence to the Constitution relate directly to the original vision for the federative compromise. They aim to re-establish, in the *Constitution Act, 1982*, the spirit that was at the origin of the Federation in 1867. While the political and constitutional context have changed greatly since the conditions were first expressed, the conditions illustrate the type of constitutional guarantees that must result from proper recognition of the Québec nation.

The improvement of our federative relations must not be reduced to a mere timeline, but must be based on affirmation, action and openness to others.

In addition, in a context in which Canadian relations are continually growing and becoming more complex, it is essential to adopt new administrative arrangements to better govern the overlapping of powers between the orders of government, especially when they give rise to an increasing number of unilateral federal initiatives in fields that are also occupied by Québec. The Government of Québec is particularly concerned about the increase in the number of private initiatives based on federal powers that preclude the application of Québec legislation. The need to establish new ways of proceeding, based on respect and cooperation, is particularly pressing in situations where the health of citizens and environmental protection are at stake.

Until the constitutional dialogue resumes, Québec remains open to the idea of moving forward on each of the above issues separately, within a flexible framework that does not require multilateral constitutional negotiations. With regard, for example, to the “federal spending power” or Québec’s involvement in the appointment of Supreme Court judges from Québec, any agreement that allows progress to be made in a manner consistent with Québec’s demands will be welcomed, bearing in mind it will constitute a step towards future and necessary constitutional changes.



4. QUÉBEC AFFIRMATION AND PROACTIVE CANADIAN RELATIONS

As illustrated in the previous sections, Québec, in the course of its history, has repeatedly sought to gain formal recognition for its national character and to ensure that the consequences of recognition are properly integrated into the functioning of the Canadian Federation.

For the Government of Québec, recognition of the Québec nation goes hand in hand with recognition of the fact that its nationhood was one of the key reasons for the federative compromise. An effort must now be made to regain what Quebecers have always sought since 1867, namely acceptance from Canada for what they are. The mutual recognition of the nations that compose Canada, a vision that lies at the very foundation of the country, will help strengthen rather than weaken its unity.

Québec wishes to use the 150th anniversary of the Federation to renew its relationship with all citizens and with its Canadian partners by focusing on an approach to federalism that recognizes a plurality of

ways of belonging. This approach is based on values that are widely shared in Canada—democracy, openness and respect. Its primary goal is to re-establish the conditions needed to define a shared understanding of the principles that should govern our country. To ensure the establishment of this shared understanding over time, the Government of Québec believes that a clear statement is

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During the opening speech of the 41st legislature, Québec Premier Philippe Couillard stated that:

[C]ette manière de nous concevoir comme Québécois en tout ce que nous faisons, c'est aussi pour nous notre manière d'être Canadiens et de nous engager dans les discussions qui concernent ce pays. Nous exercerons un leadership au sein du Canada. Nous ferons entendre la voix du Québec. Nous ferons respecter nos champs de compétence. Nous défendrons le poids du Québec dans les institutions fédérales. Nous mènerons des discussions constructives sur les défis communs et visant notre prospérité commune.²⁴⁴

[translation: [T]his way of seeing ourselves as Quebecers in everything that we do is also, to us, our way of being Canadians and of participating in the discussions concerning this country. We will exercise leadership in Canada. We will ensure that the voice of Québec is heard. We will see that our fields of jurisdiction are respected. We will defend the weight of Québec in the federal institutions. We will lead constructive discussions on common challenges, aiming to build our common prosperity.]

Québec is an active stakeholder in the Canadian Federation. It intends to play a front-line role by exercising leadership, by consolidating the bonds of trust with its partners and by working to create conditions conducive to a constructive dialogue. This will translate into a coherent governmental approach that will enable Québec to play this proactive role in Canada. Such participation within Canada calls for the respect of all dimensions of Québec's national personality.

4.1 AFFIRMATION STATEMENT

Québec is free to make its own choices and able to shape its own destiny and development. It has chosen to be part of Canada, and this choice is far more profound and significant for Quebecers than a mere cost-benefit calculation. Being part of Canada generates major economic benefits, but the choice to be part of Canada also relates to a sense of belonging.

Quebecers are attached to their Canadian citizenship, which is viewed with envy around the world. They can see signs of their history throughout Canada, and can note the progress of their shared venture and the hopes for a better world built on cooperation and solidarity. In addition, Québec has been able to grow and develop its national identity within the Canadian federal framework.

In short, the identity of a vast majority of Quebecers is based on an allegiance to Québec and a sense of belonging to Canada, and is deeply rooted in our nation's history. Canada is a richly diverse country, and must today recognize all dimensions of diversity and welcome national differences.

Quebecers, fortified by a deeply-held national identity that they hope to see rightfully recognized, have chosen to build the future alongside other Canadians.

WHO WE ARE AS QUEBECERS

- Québec is free to make its own choices and able to shape its own destiny and development.
- Québec has all the characteristics of, and recognizes itself as, a nation.
- The Québec nation is predominantly French-speaking.
- The Québec nation also includes an English-speaking community that has specific rights and prerogatives.
- The Québec nation recognizes eleven Aboriginal nations throughout Québec.
- The Québec nation is enriched by significant cultural diversity that nourishes its shared historical narrative through interculturalism.

- The model of interculturalism developed in Québec aims to strike a balance between openness to diversity and the continuity of Québec’s distinct and French-speaking identity.
- Québec’s specific identity is based on certain fundamental elements, including:
 - its unique character;
 - its use of French as the language of the majority and the official language;
 - its civil-law tradition;
 - its own political, cultural, economic, educational and social institutions.

A RECIPROCAL WILLINGNESS TO COOPERATE

- Canada must take Québec’s affirmation into consideration, along with its consequences. Canada must recognize Québec if Quebecers are to see themselves better reflected in Canada.
- Québec intends to exercise leadership within Canada and will play an active role in the development of a constructive, harmonious and mutually beneficial relationship between all the partners in the Canadian Federation, within bilateral or multilateral frameworks.
- Québec will work alongside other governments in Canada to ensure the promotion, protection, continuation and vitality of French throughout the country.
- Québec will support the Aboriginal nations to ensure that their place is recognized.

THE PRINCIPLES UNDERLYING QUÉBEC'S PARTICIPATION IN CANADA

- Québec will support the principles of federalism, including equality between the two orders of government and respect for the division of powers.
- Québec will ensure that it retains its fiscal autonomy in order to discharge its responsibilities, and will ensure that it receives its fair share of federal government expenditure, including, where appropriate, in the form of unconditional financial compensation or the transfer of tax points.
- Where necessary, Québec will give priority to asymmetry as a way to achieve genuine equality and to ensure the progress of the Federation, while respecting areas of jurisdiction and collective aspirations.
- Québec will seek cooperation and will uphold its interests in the most suitable way, bilaterally or multilaterally, or through direct dialogue with civil society.
- Québec will help shape shared institutions, including the Senate and Supreme Court, to ensure that they consider its nationhood. Québec will continue to argue that these institutions belong to the Federation and not to the federal government.
- Québec will continue to conduct its own international relations, within its jurisdiction, to complement Canada's actions. It will take steps to participate fully in the negotiation of international treaties when its interests are at stake.
- Québec will use all relevant tribunals to promote its vision of Canada in which a plurality of ways of belonging is supported on the basis of openness, mutual recognition and respect for individual and collective diversity.
- Québec will seek to extend the Canadian Francophone space.

4.2 THE GOVERNMENT AFFIRMATION PROCESS

As of now, the government is implementing a proactive Canadian governmental relations policy to defend Québec's interests and powers. In addition, this policy aims to make Québec better known to Canadian civil society and to increase its outreach throughout Canada, particularly in the economic, social and cultural spheres.

Québec's aspirations and its vision of Canada's future must be shared with the other federative partners and with all of our fellow citizens.

The Policy of Affirmation includes principles that will guide Québec's Canadian relations. In keeping with this policy, Québec will emphasize proactive diplomacy, but will also focus on fostering dialogue with the representatives of civil society. Québec's aspirations and its vision of Canada's future must be shared with the other federative partners and with all of our fellow citizens, whether through direct intervention with various groups or through traditional and social media.

The Government of Québec

In order to achieve these objectives, the Government of Québec intends to use all the means at its disposal. In concrete terms, Québec's goal of playing a more dynamic role in Canada will be reflected, first, in Québec's government structures. This redeployment of government action in the area of Canadian relations will be channelled through two main components.

The Secrétariat du Québec aux relations canadiennes

In 1961, Québec chose to establish an organization with a horizontal mandate to coordinate Québec's intergovernmental relations and ensure coherent and structured actions for the defence and promotion of Québec's interests. Today, in keeping with this vision, the Government of Québec intends to broaden the mandate of the Secrétariat to take into consideration the increasing number of intergovernmental forums, stakeholders and viewpoints on the Canadian scene.

Canadian relations will now be coordinated by the Secrétariat du Québec aux relations canadiennes (or SQRC, the Québec Secretariat for Canadian Relations), which will succeed the Secrétariat aux affaires intergouvernementales canadiennes (or SAIC, the Secretariat for Canadian Intergovernmental Affairs) and play a more prominent role as a strategic advisor in the area of Canadian relations. In addition, it will work actively to create additional bridges and possibilities for dialogue with Canadian society at all levels.

The SQRC will help defend and promote Québec's interests and its vision of Canada, particularly in connection with citizens' groups, business, social and academic communities and the French-speaking communities. The SQRC will implement a new structure for strategic monitoring, reflection and action, and will seek new input from all government departments and bodies.

An effective and proactive monitoring function is essential today for the proper conduct of Canadian relations. In an information society where interactions are increasing at all levels and are becoming more and more instantaneous, Canadian relations cannot be exercised in the same way as thirty or fifty years ago. The monitoring function will enable a more integrated processing of the information compiled by the SQRC and by all government departments and agencies, using technological tools that enhance the gathering and transfer of information. The aim of the strategic reflection function is to develop an overview of all the available information and, with the necessary perspective, prioritize the relevant information and target courses of action.

This renewed structure will help the government conduct its Canadian relations from a broader perspective, and will form the basis of its strategic action. It will provide the government with the tools necessary not only to better defend Québec's positions at intergovernmental meetings, but also to proactively promote Québec's interests at the Canadian level. To that end, the work and activities of the SQRC's strategic monitoring and analysis functions will take into account federal initiatives, and will define Québec's position within Canada so as to express its vision of federalism and promote its viewpoints in the short, medium and long term.

The Deployment of Canadian Relations Units

The proactive approach envisaged requires a review of the conduct of Canadian relations within the government. The government intends to take concrete action to improve its ability to act on and respond to issues that affect Québec on the Canadian scene. It also intends to occupy the Canadian relations space by ensuring that Québec’s voice is heard.

In order to accomplish this, under SQRC’s coordination, the government will ensure that each government department has a unit for Canadian relations, under the authority of their respective deputy minister.

With the assistance of this network, the SQRC will coordinate the defence and promotion of Québec’s interests with its federative partners and with other stakeholders in Québec and elsewhere in Canada. The network will help the SQRC determine the possibilities and opportunities for alliances with federative partners on matters of shared strategic interest. The Government of Québec intends to ensure a stronger presence on the Canadian stage by using the structural and substantive means at its disposal.

The Government of Québec intends to ensure a stronger presence on the Canadian stage by using the structural and substantive means at its disposal.

The Federal Actors

In its relations with the federal government, the Government of Québec intends to participate actively in intergovernmental forums and to play a leading role in the development of constructive, harmonious and mutually beneficial relations. It will seek to broaden the dialogue with all the federal actors in order to make its vision of federalism better known.

It also intends to maintain government-to-government relations by stating Québec’s positions directly to the federal government.

In the same spirit of dialogue, the Québec government intends to use this approach not only in dealing with the federal government, but also, when appropriate, with the caucuses of all the federal parties, and also with Senators.

Full recognition of Québec's powers and institutions remains a cardinal principle. This principle is the guarantee of consistency and effectiveness in the policies that Québec intends to continue developing and implementing in the areas under its jurisdiction. For example, concerning the new federal infrastructure funding, the government will work to ensure that the federal funds are foreseeable, respect Québec's priorities and are subject to comprehensive agreements. At the same time, the Government of Québec will continue to have project analyses conducted by Québec specialists and will continue to report the results to the Québec population. Similarly, in the fight against climate change, Québec will continue to exercise its leadership. In addition, it will ensure that all the measures already in place and prioritized by the provinces and territories are recognized and that the integrity of the carbon pricing system that it has already established is preserved.

In the interest of its citizens, and in view of the additional responsibilities that the Government of Québec must exercise in respect of its national character, the government will focus on concluding asymmetrical arrangements whenever this approach is appropriate. For example, in the area of health financing, the government considers that any increase in federal funding must be provided through the Canada Health Transfer, rather than by establishing targeted and conditional programs or funding. The federal government and Québec reached an agreement on health funding on March 10, 2017. This asymmetrical agreement grants an additional amount of almost \$2.5 billion to Québec over 10 years, which it will be able to use according to its own priorities. The agreement gives Québec an increase in federal funding of 3.6% over 10 years. However, Québec considers this agreement insufficient over the long term, because health costs are expected to rise by 5.2% per year between 2015 and 2035. A long-term solution must be found for the funding of Québec health system, and the federal government must recognize its responsibility in this regard and assume its fair share.

Finally, the Government of Québec hopes that the federal government, in exercising its own powers, will support Québec in implementing the economic development policies and priorities it has adopted, such as the Plan Nord and the Maritime Strategy.

The Provinces and Territories

Québec's relations within Canada are not limited to its federal-provincial relations, but also include a long tradition of relations with the other provinces and territories. Through the creation of interprovincial alliances, Québec seeks to exercise significant influence on the development of the Federation and also to promote and defend its distinct character.

At the initiative of the government led by Jean Charest, this partnership work resulted in the creation of the Council of the Federation in 2003. The Council facilitates interprovincial relations by fostering better consistency of interprovincial action and fruitful relations with the federal government, based on respect for constitutional powers and recognition for diversity within the Federation.

In April 2015, at the invitation of Québec, the premiers of the provinces and territories gathered at the Québec City Summit on Climate Change. At the conclusion of the Summit, they adopted a common declaration in which they undertook, among other things, to ensure a transition towards a lower-carbon economy by means of appropriate initiatives, such as the establishment of a carbon price, carbon capture and storage, or the promotion of other technological innovations. On the international scene, Québec has benefited from all the opportunities available to it to emphasize the importance of the role of federated states and regions in the fight against climate change. For example, the Climate Summit of the Americas held in Toronto in July 2015 concluded with the adoption of a common declaration, supported by Québec, reiterating the commitment of the federated states and regions of the Americas to take concrete measures to reduce greenhouse gas emissions, and affirming the importance of supporting the adoption of a carbon pricing system. In addition, Québec worked with Ontario to connect the Ontario cap-and-trade system for greenhouse gas emission rights to the joint Québec/California market, starting on January 1, 2018. In this respect, Québec is ready to collaborate with other provinces and territories that wish to join the carbon market.

In July 2015, the premiers of the provinces and territories published the Canadian Energy Strategy to foster an approach based on cooperation for sustainable energy development, which will lead to improvements in the production, transportation and use of energy in Canada.

Over and above these examples of relations carried out primarily in a multilateral context, Québec maintains relations with each provincial and territorial government. Québec intends to continue developing a more sustained bilateral collaboration with these governments and also to strengthen its alliances with certain key federative partners, notably Ontario.

More specifically, Québec and Ontario have a rich and longstanding history of collaboration and cooperation. This situation is by no means accidental, because in addition to sharing a border which extends over 1,000 km, and many socioeconomic similarities (Ontario is the province with the greatest number of French-speakers outside Québec), Québec and Ontario are important trading partners, whose economic structures are in many ways complementary. The combined economies of Québec and Ontario represent the fourth largest market in North America, after those of California, Texas and New York State. Furthermore, the two provinces contribute over 60% of Canada's GDP and account for over 75% of the country's manufacturing production.²⁴⁵ Over the past ten years, Québec-Ontario cooperation has intensified through a series of protocols and agreements in different sectors, such as transportation, civil security, labour mobility in the construction industry, and energy.

Significant progress has also been made between the two provinces in various areas, particularly in the environmental field, with the conclusion of a memorandum of agreement regarding concerted actions on climate change and market mechanisms, as well as in support for the Francophonie. More recently, Hydro-Québec signed a major agreement with Ontario. This long-term supply contract enables Québec to open up new markets while supporting its neighbouring province in its fight against climate change. Québec intends not only to maintain, but also to increase its close collaboration with Ontario.

Québec intends to actively continue its collaboration with its partners, with the ongoing objective of maintaining and developing beneficial relationships within the Federation. This close collaboration must be established with all the federative partners, including governments, but also with the members of the provincial and territorial legislative assemblies. Québec intends to build an increasing number of alliances, where suitable, to advance not only its own interests, but also those of Canada as a whole.

The Canadian Francophonie

The Government of Québec is now more than ever determined to promote the Francophonie to help gain recognition for the rights of 2.6 million Francophones and Francophiles living outside Québec. The Québec Policy on the Canadian Francophonie shows that the Québec government supports the Canadian Francophonie, in a manner complementary with the provincial and territorial governments and with French-speaking and Acadian communities. Today, most provinces and territories have passed legislation or adopted policies to promote French. The principle of the active offer of services in French has become widespread.

Québec has concluded cooperation and exchange agreements on the Canadian Francophonie with all the provincial and territorial governments. We wish to increase cooperation with these governments and increasingly work with community associations in establishing priorities for action. In this way, Québec will be fully committed to promoting the Canadian Francophonie, as it has done in the past, particularly by signing declarations with many provinces and territories respecting the Canadian Francophonie, and by renewing its cooperation agreements.

The Government of Québec plans to support actions to promote the immigration of French-speakers, an essential component in the growth

of the country's French-speaking population, to achieve the 5% target that the premiers of Canada's thirteen provinces and territories unanimously set. For the first time in 150 years of history, the

For the first time in 150 years of history, the governments are committed to unite to halt the relative demographic decline of French-speakers and to make it possible to increase the number of people able to speak French.

governments are committed to unite to halt the relative demographic decline of French-speakers and to make it possible to increase the number of people able to speak French. This is in addition to the increasing numbers of French immersion schools and classes and heightened support for French-language schools. Québec undertakes to work in collaboration with the other governments in Canada to promote and protect the continuity and vitality of the French fact.

The Aboriginal Nations

In the Speech from the Throne given by the Governor General of Canada, David Johnston, on December 4, 2015, the federal government showed openness towards a certain degree of progress, stating that:

As a country, we are strengthened in many ways: by our shared experiences, by the diversity that inspires both Canada and the world, and by the way that we treat each other.

Because it is both the right thing to do and a certain path to economic growth, the Government will undertake to renew, nation-to-nation, the relationship between Canada and Indigenous peoples, one based on recognition of rights, respect, co-operation and partnership.²⁴⁶

Over the last few years, Québec has established a nation-to-nation relationship with the Aboriginal peoples on its territory. It intends to continue in the same vein. The Government of Québec implements specific actions to consolidate its relations with the First Nations and Inuit. It intends, in particular, to play a more substantial role in strengthening their social, cultural and economic development, enabling them to take on greater responsibility. For this purpose, the Government of Québec intends to table an integrated government action plan for Aboriginal social and cultural development in the near future. This unprecedented step, taken in accordance with the theme of reconciliation, will be based on the creation of partnerships and on the strengthening of the individual and collective capacities of the Inuit and the First Nations.

Civil Society

Québec intends to increase its presence on the Canadian stage to make its voice heard and ensure that its concerns are better understood. This will be achieved through active involvement in the university sector, with business and social groups, on traditional and social media, and everywhere Québec's voice must be heard to project the vision and goals of its government.

The teams of the SQRC and the units responsible for Canadian relations in government departments will monitor the flow of information and engage in strategic planning to enhance Québec's presence. All Québec government departments and bodies will be called on to make a contribution.

Québec will use all relevant tribunes to promote its vision of Canada in which a plurality of ways of belonging is supported through openness, mutual recognition and respect for individual and collective diversity.

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It will also seek to strengthen Canadian solidarities and to bring the solitudes closer together. In the business, environment, cultural and social fields, Québec will set out its positions and seek to build alliances to broaden its influence within Canada.

4.3 CONNECTIONS BETWEEN CITIZENS

The links between Quebecers and other Canadians occur not just between governments and institutions, but above all between individuals and civil society as a whole. This is the basis on which a true dialogue on the future of our country must initially be built. This is the level at which the Government of Québec hopes to see more forums for interaction take shape, and for which the main measures in this policy are designed.

The links between Quebecers and other Canadians are deep, longstanding and durable.

The aerospace sector, of significant importance in Québec, comprises businesses that have forged partnerships with businesses established in other provinces without any government intervention.

Ontario's automotive sector relies on many Québec subcontractors, although no government intervention was at the origin of these ties.

The fact that the leader of a Québec environmental group was present for an announcement by the Premier of Alberta illustrates the relevance of increasing the interaction between Quebecers and other Canadians.²⁴⁷ Through such actions, Quebecers contribute, in other provinces, to the development of public policies reflecting their aspirations.

The links between Quebecers and other Canadians are deep, longstanding and durable. They came into being over time and outline a history that contrasts with the string of political and constitutional disagreements that have marked governmental relations between Québec and Canada. They reflect thousands of interactions that occur every day in the worlds of business, commerce and charity work, through union and social solidarity organizations, in the fight against climate change, in classrooms across the country where a love of French is instilled, and during the trips made by Quebecers who travel or live in other parts of Canada, just like the Canadians who come to discover or settle in Québec. It is through all these ties that a true coexistence and common understanding is forged.

Thanks to these spaces for dialogue and mutual recognition, Quebecers can take their place in the Canadian space, while affirming their own national identity. In other words, Québec's Canadian relations are not limited to relations conducted by the government.

Each Québec citizen or interest group, by expressing a personal vision that is sometimes different from that of the Québec government, is expressing a facet of this plural Québec. Everyone has his or her own way of displaying some of the colour of Québec.

The Government of Québec hopes to see an increase in the interactions between Quebecers and other Canadians. They already occur on their own, and must be encouraged. The Government of Québec will facilitate this trend.

Young people are a good example. The constitutional episodes of the years 1970 to 1980 and 1990 left a long-lasting mark on Québec-Canada relations, but do not necessarily resonate with or have the

.....
In their own way, young Quebecers are reinventing Québec, Canada and the world. It is their turn to prepare the future.
.....

same meaning for young people as they do for older generations.

This is reflected in recent surveys on young Quebecers' attachment to and identification with Canada, which has increased significantly in recent years.²⁴⁸

Globalization, increased mobility, and the information and communication revolution, are all realities that change the ways in which we see the world, travel and do business. Young Quebecers live at the centre of this upheaval and, as a result, are agents for change and open-mindedness.

In their own way, young Quebecers are reinventing Québec, Canada and the world.

It is their turn to prepare the future.

The Government of Québec hopes to increase the opportunities for discussion and cooperation, allowing young Quebecers to express their identity throughout Canada through intercultural exchanges, school exchange programs, research internships, language and cultural immersion programs, and mobility programs for students and young entrepreneurs hoping to enter neighbouring markets. An increase in these exchanges will raise the profile of Québec and the French language, support mutual understanding, and strengthen a shared sense of belonging.

It is important to note that on March 30, 2016, the Government of Québec announced the new 2030 Québec Youth Policy. This policy will guide government departments and organizations and determine the priority areas of the Government of Québec over the next fifteen years. One of the goals of this policy is to foster the mobility of young Quebecers in the regions, in Canada and in the world, while enhancing opportunities for them to obtain a diversity of experiences.

In order to encourage the presence of young Quebecers throughout Canada, we aim to build on the expertise and knowhow developed by the Offices jeunesse internationaux du Québec (LOJIQ) which will give a single access point for internships for young Quebecers, not only internationally but also in Canada.

Between 2012-2013 and 2016-2017, the Government of Québec financed 79 youth cooperation initiatives related to the Canadian Francophonie. These initiatives supported the participation of delegations of young Quebecers in the Forum jeunesse pancanadien, in the Jeux de la francophonie canadienne, in the Forum de la francophonie canadienne, in the Parlement jeunesse Canadien, in student mobility programs and in transfers of expertise. In addition, through various activities (young ambassadors forum, university summer school, youth parliament, Radio jeunesse des Amériques, academic exchanges), the Centre de la francophonie des Amériques helps to support the Francophonie of the Americas by enabling young Quebecers to express their own vision of the world. The youth dialogue already exists; the idea is to open up more space for it.

Other ideas for building ties could certainly come to mind.

The spaces for reflection on federalism and Canadian relations must be occupied to a greater degree so that Québec's viewpoints on these issues become better known and understood throughout Canada. In May 2008, Patrick Fafard and François Rocher published a study on the state of research on federalism in Canada.²⁴⁹ They noted that in Canada, only 15% of research in this field originates from Québec. Themes dealing with Québec's concerns, such as the constitutional aspects of federalism, are declining and Québec publications concerning federalism (generally written in French) are rarely found in the rest of Canada. Finally, the authors noted that there was little interaction between Québec scholars and those from the rest of Canada.

In this regard, the SQRC intends to place the Research Support Program on Intergovernmental Affairs and Québec Identity (PSRAIIQ) at the centre of its actions. By financially supporting the conduct of research, the publication of papers and the organizing of meetings between experts, this program aims to put forward Québec's vision in public debates, and to strengthen interaction between actors of civil society in Québec and in Canada.

The proactive implementation of this program by the SQRC will help clarify its needs-based directions and priorities, and help launch calls for research targeting current topics (e.g.: fiscal federalism, environmental federalism).

More broadly, in order to encourage the affirmation of Québec in the circulation of ideas on federalism and Canadian relations, the SQRC expects, in particular, to:

- Promote and financially support the participation of Québec academics presenting their research at symposia held at universities or think-tanks in the other provinces or territories.
- Coordinate the participation of Québec's representatives in public forums in universities and think tanks in other provinces and territories.
- Increase its presence in think-tanks in Canada by participating in the work of their lead committees (for example an advisory committee or their panel of experts).
- Provide professional internships within the Québec public service, intended for Canadian university students from outside Québec.

In addition to these measures under the responsibility of the SQRC, the Government of Québec will promote platforms to disseminate knowledge in Québec. For example, the mandate of Québec’s Chief Scientist, who directs the Fonds de recherche du Québec, is to achieve excellence and to enhance Québec’s position and influence in Canada and internationally.

The Government of Québec intends to create conditions that are conducive to the affirmation of Québec and to dialogue in as many sectors of civil society as possible.

Youth and the dissemination of knowledge are two examples of fields in which the levers available to Québec could be used to foster the desired dialogue within civil society. The Government of Québec intends to create conditions that are conducive to the affirmation of Québec and to dialogue in as many sectors of civil society as possible. Whether in the economic, social or cultural sectors, a more proactive approach will be advocated from now on.

The Government of Québec, with the SQRC’s support, will identify and put forward measures to promote closer connections between citizens. In addition, over the medium and long term, strategic actions will be targeted to support the aims of this Policy.

CONCLUSION

In a federation, it is normal for disputes to arise between the partners, and dialogue must be the preferred way of settling them. Dialogue and trust, in turn, must be based on mutual recognition, in other words on respect for others and for their differences.

Multinational federalism works to the extent that the bond of trust between the constituent nations is maintained. This does not mean that conflicts between the political players will disappear, but rather that they will be managed in a responsible manner by the national political communities.²⁵⁰

Respect for the division of powers and effective collaboration between the partners are essential to the functioning of a federation that is respectful of its diversity.

The Government of Québec firmly believes in the need to forge a shared understanding and deeper ties with its federative partners, and intends to play an active role in advancing the Canadian Federation while taking into account the mutual interests of each of the partners. The goal of this approach is to consolidate the bonds of trust between Québec and the other Canadian actors, which will be essential if the constitutional text is to be amended. As stated by Québec Premier Philippe Couillard before the Legislative Assembly of Ontario:

Dialogue and trust must be based on mutual recognition, in other words on respect for others and for their differences.

[...] Québec progresses when it seeks to unite rather than divide, when it participates rather than excluding itself, and above all, when it builds bridges with its partners in the federation rather than putting up walls.²⁵¹

In this spirit, Québec intends to participate fully in Canada's future and to play a constructive role in the implementation of joint projects.

The sense of belonging that a majority of Quebecers feel towards Canada is anchored not only in a long, shared history, but also in a joint desire to plan future projects with other Canadians. The Canadian federal model, which can still be improved, holds great promise for the future, because it is rooted in the very idea of a plurinational state and

a willingness to live together while respecting diversity.

Québec progresses when it seeks to unite rather than divide. When it participates rather than excluding itself. Above all, when it builds bridges with its partners in the Federation rather than putting up walls.

Québec's preferred option is a form of Canadian federalism that, in addition to respect for individual diversity, recognizes collective diversity. The affirmation of Québec's nationhood and its acceptance by Canada are at the heart of this vision of federalism.

At a time when the identity of a vast majority of Quebecers is based on allegiance to Québec and a sense of belonging to Canada, an acceptance of individual and collective belongings and recognition of diversity in all its dimensions will strengthen a shared sense of belonging and give all Canadians an opportunity to participate with pride in an approach to cohabitation that offers hope for the future.

Today, Québec is stepping forward, setting out its vision of federalism and clearly defining the place that it intends to take within Canada.

Any process designed to allow Québec's full adhesion to the Canadian constitutional order must, however, be realistic and prudent. It must fit into a historical continuity, while embodying renewal. It must also take existing constraints into consideration, particularly the trust that remains fragile between the federative partners and the difficulty of reopening the constitutional discussion. However, Québec and Canada seem ready for a change of paradigm.

In order to strengthen trust between the federative partners, the Government of Québec intends to rebuild the conditions needed for constructive dialogue. The Constitution, and any negotiations to amend the Constitution, should be seen as the end-point rather than the starting-point of the dialogue.

Claude Ryan considered that openness and compromise allow for negotiation with the other party “*qui ne sera alors plus considéré comme un ennemi potentiel, mais plutôt comme un partenaire avec qui il est possible d’être écouté et respecté*”²⁵² [translation: who will no longer be considered as a potential enemy, but rather as a partner with whom it is possible to be listened to and respected.] The prior condition is mutual recognition on the basis of which it is possible to establish a common culture of dialogue.²⁵³

This policy of recognition should constitute the foundation of the dialogue on the future of Canadian federalism. The foundation for our “willingness to live together” is a public debate between national entities and citizens from various horizons who share a common destiny and goal.

The Canadian federal model, which can still be improved, holds great promise for the future, because it is rooted in the very idea of a plurinational state and a willingness to live together while respecting diversity.

There is a growing need to resume dialogue on who we are. In order to do this, it is necessary, first and foremost, to open spaces for discussion, to create favorable conditions for a broader dialogue, a mutual listening and a common understanding.

Over the years, connections have been forged between Quebecers and other Canadians; connections linking individuals, networks and associations that make up civil society. These connections are the key to a genuine dialogue. We must hope that they will intensify and we will act in this direction.

Beyond more proactive Canadian governmental relations, this policy pursues the goal of making Québec better known to Canadian civil society and facilitating across Canada the recognition of what we are. In order to do this, the government will gradually implement various measures to deploy Québec’s Canadian relations, multiply the places for exchanges, increase links between Quebecers and other Canadians, and create favorable conditions for dialogue in as many sectors of civil society as possible.

QUEBECERS, OUR WAY OF BEING CANADIAN

Québec will take the initiative in this dialogue, while reminding its federative partners of the essence of Québec's difference. Our actions will foster the affirmation of our nationhood. We must make our voice heard, in order to be better understood.

We are Quebecers, and this is our way of being Canadian.

NOTES AND COMMENTS

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- 101 *Reference re Employment Insurance Act (Canada), ss. 22 and 23*, [2005] 2 SCR 669.
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- 125 STATISTICS CANADA, “Aboriginal Peoples in Canada: First Nations People, Métis and Inuit” in National Household Survey, 2011, p. 15, online: <http://12statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/99-011-x201101-eng.pdf>.

- 126 Carole LÉVESQUE “The Presence of Aboriginal Peoples in Quebec’s Cities: Multiple Movements, Diverse Issues” in David NEWHOUSE and Evelyn PETERS, Eds., *The Presence of Aboriginal Peoples in Québec’s Cities*, Ottawa, Government of Canada, 2003, p. 26, online: <http://publications.gc.ca/collections/Collection/CP22-71-2003E.pdf>.
- 127 See *supra* note 117 for English as mother tongue. STATISTICS CANADA, “Population by Mother Tongue and Age Groups (total), 2011 Counts, for Canada, Provinces and Territories” in *Language Highlight Tables, 2011 Census*, Ottawa, Government of Canada, 2011.
- 128 Statistics Canada states: “There is no established definition of Anglophone. For historical reasons, Statistics Canada has generally used the criterion of mother tongue, that is, the first language learned at home in childhood and still understood at the time of the census. Statistics based on mother tongue have the advantage of being roughly comparable going back more than half a century. Other criteria are also used, opening the way for either more inclusive or more restrictive definitions of English-speaking persons. Thus, does the definition of an Anglophone in Quebec apply to some 607,000 persons who reported having English as their mother tongue at the time of the 2006 Census, 995,000 persons with English as their first official language spoken, or 1,275,000 persons who speak English most often (more than 835,000) or on a regular basis (more than 439,000) at home?” In this regard, see Jean-Pierre CORBEIL *et al.*, *Portrait of Official-Language Minorities in Canada – Anglophones in Quebec*, Ottawa, Statistics Canada, 2010, p. 8.

These various definition criteria explain the reference in this document to both native language Anglophones and Anglophones whose first official language (Canada) spoken is English, based on the source of the statistics reported.

- 129 As Statistics Canada also points out, the distribution of Anglophones in Quebec is particular, since it tends to be highly concentrated in certain municipalities. Thus: “More than 70% of Anglophones (714,000) in Quebec live in a municipality where the Anglophone group represents at least 30% of the population. In fact, approximately half of Quebec’s Anglophones (52% or 515,000 persons) account for between 30% and 49.9% of the population of the municipality in which they live, and 200,000 of the province’s Anglophones, or 20% of the total, live in municipalities in which they constitute the majority.” In this regard, see Jean-Pierre CORBEIL *et al.*, *Portrait of Official-Language Minorities in Canada – Anglophones in Quebec*, Ottawa, Statistics Canada, 2010, p.15, online: <http://www.statcan.gc.ca/pub/89-642-x/89-642-x2010002-eng.pdf>.

- 130 *Charter of the French Language*, c. C-11, s. 9.
- 131 Under section 29.1 of the *Charter of the French Language*, municipal organizations may be recognized where more than half the residents in their territory have English as their mother tongue. Health and social services institutions may also obtain similar recognition if they provide services to persons who, in majority, speak a language other than French. In this regard, see OFFICE QUÉBÉCOIS DE LA LANGUE FRANÇAISE, *Organismes municipaux et l'article 29.1*, online: https://www.oqlf.gouv.qc.ca/francisation/admin_publ/rec291.html.
- 132 Rodrigue LANDRY and Réal ALLARD, “Bilinguisme et construction identitaire d’élèves d’écoles de langue anglaise au Québec” (2016) 7 *Linguistic Minorities and Society* 18, p. 20.
- 133 Jack JEDWAB and Hugh MAYNARD, “Politics of Community: The Evolving Challenge of Representing English-Speaking Quebecers” in Richard Y. BOURHIS, Ed., *New Canadian Perspectives: Decline and Prospects of the English-Speaking Communities of Quebec*, Ottawa, Canadian Heritage, 2012, p. 302.
- 134 MINISTÈRE DE L’IMMIGRATION, DE LA DIVERSITÉ ET DE L’INCLUSION, *Québec Immigration Planning for the Period 2017-2019*, Consultation Booklet, Québec, 2016, p. 25, online: https://www.bibliotheque.assnat.qc.ca/DepotNumerique_v2/AffichageFichier.aspx?idf=165222.
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- 139 CANADIAN HERITAGE, *A Portrait of the English-speaking Communities in Québec*, Ottawa, Government of Canada, June 2011, p. 5.
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- 193 On this more general matter of the international context in which was adopted the *Canadian Charter of Rights and Freedoms*, see Alan C. CAIRNS, *Charter versus Federalism*, Montréal, McGill-Queen’s University Press, 1992, p. 11-32.
- 194 *Ibid.*
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- 196 The *Insite* affair, concerning supervised injection sites, is a good example in this regard: *Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 SCR 134.
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Furthermore, bilateral constitutional amendments seem to circumvent this new political requirement. Those concerning New Brunswick (1993), as well as Québec (1997), were not submitted to referenda in those provinces. In contrast, in 1997, Newfoundland and Labrador chose to submit such a bilateral amendment to popular consultation.

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- 200 FORUM OF FEDERATIONS, *Introduction to Federalism: Federalism by Ron Watts*, 2016, online: <http://www.forumfed.org/federalism/introduction-to-federalism/>.
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- 212 Christophe PARENT, “Les limites du multiculturalisme dans la reconnaissance de la diversité nationale” in Jorge CAGIAO Y CONDE and Alfredo GOMEZ-MULLER, Eds., *Le multiculturalisme et la reconfiguration de l’unité et de la diversité dans les démocraties contemporaines*, Coll. Diversitas, Brussels, P.I.E. Peter Lang, 2014, p. 32.
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- 215 In this regard, see François ROCHER, “La dynamique Québec-Canada ou le refus de l’idéal fédéral” in Alain-G. GAGNON, Ed., *Le fédéralisme canadien contemporain : fondements, traditions, institutions*, Coll. Paramètres, Montréal, Les Presses de l’Université de Montréal, 2006, p. 93 to 146; Will KYMLICKA, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*, New-York, Oxford University Press, 2001; Marc-Antoine ADAM, “The Constitution Act, 1982 and the Dilemma of Canadian Duality since 1760” in Graeme MITCHELL *et al.*, *A Living Tree: The Legacy of 1982 in Canada’s Political Evolution*, *supra* note 181, p. 644-645.
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Gopinath JEYABALARATNAM and Stéphane PAQUIN, "La politique internationale du Québec sous Jean Charest: l'influence d'un premier ministre" (2016) *Revue québécoise de droit international*, Hors-Série, p. 165-186.

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In its report, the Commission summarized the three problems of Canadian fiscal federalism: "imbalance between spending and access to sources of revenue, the inadequacy of intergovernmental transfers from the federal government to the provinces and the 'federal spending power'."

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- 222 Alain NOËL, "Équilibres et déséquilibres dans le partage des ressources financières" in Alain-G. GAGNON, Ed., *Le fédéralisme canadien contemporain*, *supra* note 215, p. 308.
- 223 See François ROCHER, "La dynamique Québec-Canada ou le refus de l'idéal canadien" in Alain-G. GAGNON, Ed., *Le fédéralisme canadien contemporain*, *supra* note 215, p. 96-97.

- 224 *Ibid.*, p. 98.
- 225 COMMISSION ROYALE D'ENQUÊTE SUR LES PROBLÈMES CONSTITUTIONNELS, *Rapport de la Commission royale d'enquête sur les problèmes constitutionnels*, vol. 3, t. 2, Québec, 1956, p. 204.
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- 227 OFFICE OF THE PARLIAMENTARY BUDGET OFFICER, *Fiscal Sustainability Report 2016*, Ottawa, June 2016, p. 1-2, 17-18.
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- 232 Jane JENSON, "Reconnaître les différences : sociétés distinctes, régimes de citoyenneté et partenariat" in Guy LAFOREST and Roger GIBBINS, Eds., *Sortir de l'impasse : les voies de la réconciliation*, Montréal, Institut de recherche en politiques publiques, 1998, p. 251.
- 233 PARTI LIBÉRAL DU QUÉBEC, COMITÉ SPÉCIAL SUR L'AVENIR POLITIQUE ET CONSTITUTIONNEL DE LA SOCIÉTÉ QUÉBÉCOISE, *Un projet pour le Québec : affirmation, autonomie et leadership: rapport final*, sous la direction de Benoît Pelletier, Montréal, October 2001, PLQ, p. 61.
- 234 David C. HAWKES, "Reconfederating Canada" in John E. TRENT *et al.*, *Québec-Canada : nouveaux sentiers vers l'avenir*, Ottawa, Les Presses de l'Université d'Ottawa, 1996, p. 310.

As an illustration, when Prince Edward Island joined, it was guaranteed continuous communication with the mainland, and Newfoundland and Labrador was granted the perpetuation of certain rights, particularly relating to fisheries, as well as an exemption to the application of section 93 of the *C.A., 1867*.

- 235 Gil RÉMILLARD, "Speech at the Canadian Bar Association Meeting, Whistler, February 24, 1992" in SECRÉTARIAT AUX AFFAIRES INTERGOUVERNEMENTALES CANADIENNES, *Québec's Positions on Constitutional and Intergovernmental Issues from 1936 to March 2001*, Québec, Government of Québec, 2001, p. 178, online: http://www.saic.gouv.qc.ca/documents/positions-historiques/positions-du-qc/part2/GilRemillard1992_en.pdf.
- 236 *Reference re Securities Act*, [2011] 3 SCR 837, par. 61-62; quoted in *Quebec (Attorney General) v. Canada (Attorney General)*, [2015] 1 SRC 693, par. 19.
- 237 On this issue, see Johanne POIRIER, "Taking Aim at Cooperative Federalism: The Long-Gun Registry Decision by the Supreme Court of Canada" (2015) *Int'l J. Const. L. Blog*; Eugénie BROUILLET, "Canadian Federalism and the Principle of Subsidiarity: Should We Open Pandora's Box?" (2011) 54 *Supreme Court Law Review 2nd series* 601; Hugo CYR, "Autonomy, Subsidiarity, Solidarity: Foundations of Cooperative Federalism" (2014) 23: 4 *Constitutional Forum* 20.
- 238 André BURELLE, *Pierre Elliott Trudeau, l'intellectuel et le politique*, *supra* note 168, p. 454
- 239 *Projet de loi fédéral relatif au Sénat (Re)*, 2013 QCCA 1807; *Reference re Senate Reform*, [2014] 1 SCR 704.
- 240 *Re: Authority of Parliament in Relation to the Upper House*, [1980] 1 SCR 54, p. 67; *Reference re Senate Reform*, *Ibid.*, par. 15.
- 241 SECRÉTARIAT AUX AFFAIRES INTERGOUVERNEMENTALES CANADIENNES, *Québec's Positions on Constitutional and Intergovernmental Issues from 1936 to March 2001*, Québec, Government of Québec, 2001, par. 207, 313, 334, online: <http://www.saic.gouv.qc.ca/affaires-intergouvernementales/positions-historiques/positions-quebec-1936-2001-en.asp>.
- 242 See above the analysis of the process recently instigated by the federal government.
- 243 Eugénie BROUILLET, "La légitimité fédérative du processus de nomination des juges à la Cour suprême du Canada" (2011) 41: 1 *R.G.D.* 279, p. 284.
- 244 PHILIPPE COUILLARD, *Discours d'ouverture de la première session de la 41^e Législature de l'Assemblée nationale du Québec*, Québec, Assemblée nationale, May 21, 2014, online: <https://www.premier-ministre.gouv.qc.ca/actualites/allocutions/details.asp?idAllocutions=857>.

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- 246 David JOHNSTON, *Making Real Change Happen, Speech from the Throne to Open the First Session of the Forty-second Parliament of Canada*, December 4, 2015, p. 6, online: http://speech.gc.ca/sites/sft/files/speech_from_the_throne.pdf.
- 247 On November 22, 2015, Steven Guilbeault, Senior Director at Équiterre, appeared alongside Alberta Premier Rachel Notley for the announcement of Alberta's plan to combat climate change. On this subject, see the press release posted by the organization ÉQUITERRE: *Climate Change: Equiterre Salutes Major Shift Announced by Alberta Government*, Press Release, November 22, 2015, online : <http://www.equiterre.org/en/communiqué/climate-change-equiterre-salutes-major-shift-announced-by-alberta-government>
- 248 See the section of this document on multiple belongings. See also Alec CASTONGUAY, "L'attachement au Canada grimpe chez les jeunes", *supra* note 149.
- 249 Patrick FAFARD and François ROCHER, *The Current State of Federalism Studies in Canada (2000-2007): A Quantitative and Qualitative Review of the Scholarly Literature*, Canadian Policy Research Network, Ottawa, May 2008.
- 250 Alain-G. GAGNON, "Conjuguer communauté, autonomie et habilitation : la dure naissance d'une école de la diversité dans le monde occidental" in Michel SEYMOUR and Guy LAFOREST, Eds., *Le fédéralisme multinational: un modèle viable?*, *supra* note 210, p. 109.
- 251 PHILIPPE COUILLARD, *Allocution du premier ministre du Québec, Philippe Couillard, devant l'Assemblée législative de l'Ontario*, Toronto, May 11, 2015, online: <https://www.premier-ministre.gouv.qc.ca/actualites/allocutions/details-en.asp?idAllocutions=888>.
- 252 Jean-François CARON, *Être fédéraliste au Québec*, Québec, Presses de l'Université Laval, 2016, p. 33.
- 253 Claude RYAN, "Réponse à James Tully. Le défi canadien : faire droit à deux visions différentes du pays", *supra* note 46.

