

STATEMENT BY THE CONSEIL DU PATRONAT DU QUEBEC REGARDING
THE FEDERAL PROPOSAL ON THE PATRIATION OF THE CONSTITUTION

OCTOBER 1980

Wednesday, October 8, 1980

2:00 p.m.

Despite certain reservations
the C.P.Q.'s response to the
Trudeau proposal is generally favourable

Montreal, October 8, 1980 - The Board of Directors of the Conseil du Patronat du Québec (C.P.Q.) today stated that it was generally favourable to the federal proposal on the patriation of the Constitution. The integral text of the C.P.Q.'s statement follows.

STATEMENT OF THE C.P.Q. REGARDING THE FEDERAL PROPOSAL ON THE PATRIATION OF THE CONSTITUTION

1) ECONOMY

If we consider the economic interests of Canadians from all regions, it is clear, in the opinion of the C.P.Q., that there is no reason for opposing the federal proposal regarding the patriation of the Constitution. On the contrary, the debates on this subject which have been going on for ten years have amounted to an enormous waste of energy, and elected governments are supposed to have better things to do than to pursue useless debates. Therefore, the idea of wanting to break the deadlock is positive.

Moreover, the uncertainty surrounding the future of Canada's Constitution has a negative effect on the economy. Ending this uncertainty is clearly a desirable objective.

To pretend that the federal government is acting hastily when this proposal comes after at least ten years of continual debates and meetings is clearly playing on words. Any Canadian citizen interested in the Constitution

has had plenty of time to form an opinion. The decision has surely not come too soon. Moreover, despite the fact that the various political factions have put up the same roadblocks year after year, it is clear that, according to public opinion polls, the majority of Canadian citizens do not condone these interminable discussions among politicians.

2) UNILATERALISM

We would have liked to see the federal-provincial conferences achieve some positive results. If we had had to choose between a proposal which had been unanimously endorsed by our elected officials and a purely federal one, there is no doubt that we would have chosen the unanimous one. However, this choice does not exist. Besides, opposing the federal proposal to a now-existent unanimous one inevitably results in the same useless debates.

The federal proposal breaks a deadlock. The provincial governments have had years, dozens of meetings and thousands of hours of work in specialized committees of all kinds to break this deadlock. They have proved that it is impossible to reach a consensus of opinion among eleven teams of politicians defending their own electoral interests. To continue to support the thesis of unanimity would be akin to wanting any attempt at constitutional reform to fail.

There is nothing to stop the federal government from making a decision at this time. It is the only one that can do so. It remains to be seen whether or not we agree with the content of the federal proposal. Under the present circumstances, any reference to the idea of unanimity is like seeking a pretext for refusing to express an opinion on the content of the proposal.

3) ON THE ESSENTIAL CONTENT: FUNDAMENTAL FREEDOMS AND THE AMENDING FORMULA

First of all, the federal proposal resolves the issue of making the Canadian Constitution truly Canadian, a principle with which everyone agrees despite the arguments about how it should be done. We have nothing more to say on this principle.

The federal proposal also seeks to preserve the Constitution's present content as much as possible. For the absence of an agreement on a new constitution, this appears to be the only possible solution.

The fact remains, nevertheless, that the Constitution, in ceasing to be an Act of the British Parliament, loses some of its present characteristics, making it necessary to add new components, of which the following two are essential: firstly, the definition of fundamental rights of citizens and, secondly, an amending formula.

FUNDAMENTAL FREEDOMS

With respect to the first essential component, as long as the Canadian Constitution was a British Act, Canadian citizens enjoyed the constitutional or traditional guarantees of "British subjects". In becoming truly Canadian, the Constitution must continue to formally guarantee rights and freedoms inherent in the status of citizen. These rights must be entrenched in the Constitution because they cannot depend solely on the majority vote of a parliamentary assembly. Amending a constitution is a difficult and slow process. Because of this, the Constitution provides continuity and ensures protection against any possible errors on the part of a simple parliamentary majority.

The federal government maintains this position. For the sake of the higher interests of Canadians, such a position must be supported. When provincial governments declare their opposition to this thesis on the grounds that it limits their powers, we are given another reason for supporting the federal position. The fundamental rights of citizens are above political powers and must restrict government intervention. It is for this reason that they must be entrenched in the Constitution.

"Fundamental freedoms cannot be subject to bargainings": this is the stand which the federal government has taken and in so doing, it is defending the higher interests of all citizens. It has our support, all the more so since in taking such a stand, it is not only restricting the powers of the provincial governments, but those of the federal government as well.

THE AMENDING FORMULA

At present, any amendment to the Canadian Constitution has to be approved by the British Parliament. Patriation would alter this situation. Therefore, a new amending formula must be worked out. On this point, we are far from having reached a reasonable concensus of opinion. Therefore, we must patriate the Constitution in the near future without including an amending formula, a move which appears contradictory.

To resolve this deadlock, the federal government proposes to take two more years to define, by way of negotiations, the amending formula. After ten years of debate, a new two-year extension is surely not unreasonable. What happens if an agreement has not been reached after two years? This

possibility must be borne in mind, or else the deadline would not be a true one. The federal proposal regarding an amending formula is as good as any other and it contains a sufficient number of precautionary measures to avoid, in the end, a totally unacceptable decision.

Basically, what counts is that a Constitution protect its citizens, provide stability and guarantee continuity. It must not be just another piece of legislation which can be amended at any time by a simple parliamentary majority. All of the amending formulas on which the provincial governments have come close to agreeing meet these criteria. Within the next two years, a final choice will be made between proposals which differ mainly with respect to secondary aspects. There is no reason to believe that this choice will be a calamitous one!

4) OTHER MATTERS RELATED TO PATRIATION

Lastly, the federal proposal also involves two amendments to the Constitution which did not necessarily have to be submitted at this time. The federal government wants to have written into the Constitution new regulations respecting equalization payments and education.

On this point, the federal government argues that an agreement in principle has already been reached among all governments. If such is the case, the federal government is clearly justified in taking such action. If it is not the case, it should refrain from doing so and submit these proposals again once a new amending formula has been defined. It will be up to the House of Commons and the Senate to decide whether the proof of unanimity is sufficient.

Basically, we agree with these two proposals. Regarding the educational issue, we maintained essentially the same position in Quebec. We believe that it would be only fair if the other provinces were required under the Constitution to apply the same principles to French Canadians. As far as the system of equalization payments is concerned, it is currently covered by federal legislation. By writing it into the Constitution, the federal government is limiting its own freedom of action, to the provinces' advantage. The provinces would therefore be unwise to oppose this proposal.

However, despite the fact that we agree on the basic issues, we believe that these two proposals should be set aside unless the government is able to prove, to the satisfaction of both Houses, that agreement in principle on these subjects has already been reached at the constitutional conferences. Proof of this must be found in official written transcripts.

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SUMMARY

Despite certain reservations, the Conseil du Patronat du Québec (C.P.Q.) has a generally favourable view of the federal proposal on the patriation of the Constitution.

In the opinion of the C.P.Q., it is clear that the federal proposal has a positive impact in terms of the economic interests of all Canadians.

From a socio-political standpoint, the C.P.Q. would have like to see a proposal unanimously endorsed by the provinces, but in the absence of such unanimity, the federal proposal breaks the deadlock. Regarding the essential content of the proposal, namely fundamental freedoms and the amending formula,

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the C.P.Q. supports the federal government.

As for the amendments dealing with education and equalization payments, the C.P.Q. does not see the need for introducing them at this time, unless they have already been the subject of an agreement in principle.

THE QUÉBEC BUSINESS COMMUNITY

AND

CONSTITUTIONAL REFORM

CONSEIL DU PATRONAT DU QUÉBEC

January, 1981

THE QUÉBEC BUSINESS COMMUNITY AND CONSTITUTIONAL REFORM (1)

I. PRELIMINARY OBSERVATIONS

- 1.1 The present document is neither a treatise on the Canadian constitution nor an exhaustive assessment of the existing constitution. Rather, it aims to present some of the views most commonly held by Québec businessmen on the direction constitutional reform should take.

Though we recognize the complexity of the problems involved, we shall attempt to reduce them to manageable proportions and to group ideas within a number of themes.

- 1.2 By the same token, this document is not intended to deal with the various options open to Canadians to allow for implementation of certain concepts, nor to choose words which would elegantly express the general objectives to be achieved in acceptable legal style. On the contrary, it merely seeks to state as accurately as possible the most important improvements one hopes to see introduced into the provisions of the constitution.

1.3 The constitution is in no way the most important problem facing businessmen; it is important when the rules it establishes and the way they are used become needless obstacles to economic activity. As a result, businessmen are interested primarily in the constitution's economic implications; this accounts for the importance accorded to questions relating to authority, regulation and complementarity of roles.

In addition, the constitution and the institutions governed by it, the way it has been interpreted over the years, the amendments made at various times in our history, and the customs it has created constitute a whole which should be renewed only with the greatest caution. One must recognize that our constitution has served us relatively well for more than a century.

However, there is no doubt that some reform is warranted and that politicians, who have made many promises on the question, have now reached the time for decision-making. It is undesirable that the uncertainty caused by the review process continue much longer.

1.4 The general objectives most frequently expressed by members of the Québec business community are the following:

- 1) to maintain the spirit of Canadian federalism intact;
- 2) to reduce government intervention in the life of the people.

II. QUÉBEC'S SPECIAL CHARACTERISTICS

- 2.1 We recognize there are characteristics specific to Québec society and there is no doubt in our mind that these characteristics should be one of the important factors to be considered in the constitutional review.
- 2.2 The specificity of Québec society is primarily cultural and social in nature. Québec--the main base of the French language in Canada--has developed its own institutions; they reflect its language and culture.
- 2.3 Via these institutions, Québec is endowed with a public system which varies greatly in character from that in the rest of the country.
- 2.4 Businessmen believe these cultural and social characteristics must be recognized and that they must form one of the foundations of the constitutional review.
- 2.5 This having been said, they agree, on the contrary, that the admitted differences should be recognized quickly so as to concentrate more readily on similarities and to establish the common base of the revised constitution.

II. BASIC RIGHTS

3.1 The majority of businessmen recognize the necessity of incorporating in the constitution the basic rights of the individual.

3.2 Basic rights are individual rights which define the very status of the citizen and which no collective power must ever violate. Among these are freedom of conscience, of religion, of opinion, of expression, of action, of assembly and of association; of one's freedom to dispose of one's personal goods and to choose one's place of residence. Though they are different in nature, language rights (French-English) should be specifically recognized in the constitution. Similarly, the right to French and English education must be recognized.

3.3 Basic rights must be entrenched in the constitution because they are above any special political decision.

It goes without saying that these rights could be demanded in the courts should they be infringed.

IV. THE CONSTITUTION

4.1 Québec businessmen favor a renewal of the present constitution rather than a totally new constitution. In fact, businessmen believe Canada has done well under the present constitution, as illustrated by the Canadian standard of living. All in all, the constitution has not served us too badly during the last hundred years. They also agree the constitution should be Canadianized, therefore patriated, and that the renewed constitution should continue to take the form of an implicit rather than an explicit contract. In this sense, no attempt should be made to elaborate specifically on every possible situation which may emerge in future, but rather one should rely on the good faith of the parties and on the basic unwritten agreement which must exist among the partners to this understanding--an agreement which rests on their desire to continue living together.

4.2 The business community would also like to see an ongoing amending process which would consist, possibly along the lines of the U.S. Supreme Court, not only in interpreting but even in fact of amending the constitution, by modernizing it and keeping it up to date with the new events and situations which may occur. To ensure the stability of the provisions of the constitution, the process should be demanding and should avoid political considerations while maintaining a greater flexibility than the judicial process alone.

V. THE CANADIAN MARKET

5. A free trade market

5.1 Businessmen want the Canadian economy to be regulated, fundamentally, under the rules of free trade, thereby ensuring the broadest possible exchange of goods, services, people and capital.

5.2 It is hoped a specific institution independent of government be vested with the responsibility of supervising the practice of free trade. This body, which could be an existing one, would have sufficient power to declare ultra vires any constraint on the free exchange of people, capital goods and services.

5.3 The free trade concept on the Canadian market does not imply a refusal to communicate or even a reduction in communications with the outside world. Indeed, the considerable savings to be derived from a more integrated Canadian market would make Canadian business more competitive on foreign markets. Conversely, foreign companies would feel more attracted to a larger market, bringing with them new techniques, ideas and resources.

VI. THE DIVISION OF POWER

6.1 On the question of the division of power--a vital question in a federal system--businessmen opt for continuity wherever possible. However, they hope the review process will allow for better identification of the roles and the mission of each level of government. As a general rule, each government would retain its present powers, though some adjustments or updating must be envisaged.

6.2 It is hoped the federal government would behave less like an eleventh provincial government and more like the national government. Furthermore, it is considered desirable that, within this context, we succeed in identifying efficient ways to prevent the tendency of the central government to intrude upon provincial jurisdiction as it has often done in the past.

6.3 Similarly, the Canada of the future cannot afford to divide among many levels of government the responsibility and power normally associated with monetary policy, fiscal policy and other fields for which the national government would assume predominant and often exclusive power (defence, exchange of people and goods, etc.).

The consultation process between the central government and its regions should also be part of the Canada of the future.

5.4 In short and taking into consideration the fact that a federal régime involves a multiplicity of governments, businessmen strongly believe governments should take advantage of the constitutional review to:

- a) - increase the complementarity of their activities
- b) - reduce, if not completely eliminate, all overlapping or duplication which is unjustified in the light of objective and clearly defined criteria (ex.: Communications, Transport, Environment, Urban Affairs);
- d) - deregulate and reexamine the entire range of governmental services with a view to control by the people.

VII. RESOURCES

7.1 Finally, businessmen agree Canada is a country with enormous natural resources and that these resources should serve to unite Canadians rather than to divide them. Notwithstanding the fact everyone agrees natural resources are the responsibility of the provinces, the debate on this question must be approached rationally since it is of great importance to an integrated economy such as Canada's. No Canadian, Québec businessmen believe, stands to gain from any unreasonable restriction on each Canadian's access to natural resources.

- (1) (This text is a free translation of the French original to which reference should be made in case of doubt as to the intent of the authors)

(C.P.Q.)
January, 1981