AUTONOMY
ARRANGEMENTS IN THE WORLD

Québec

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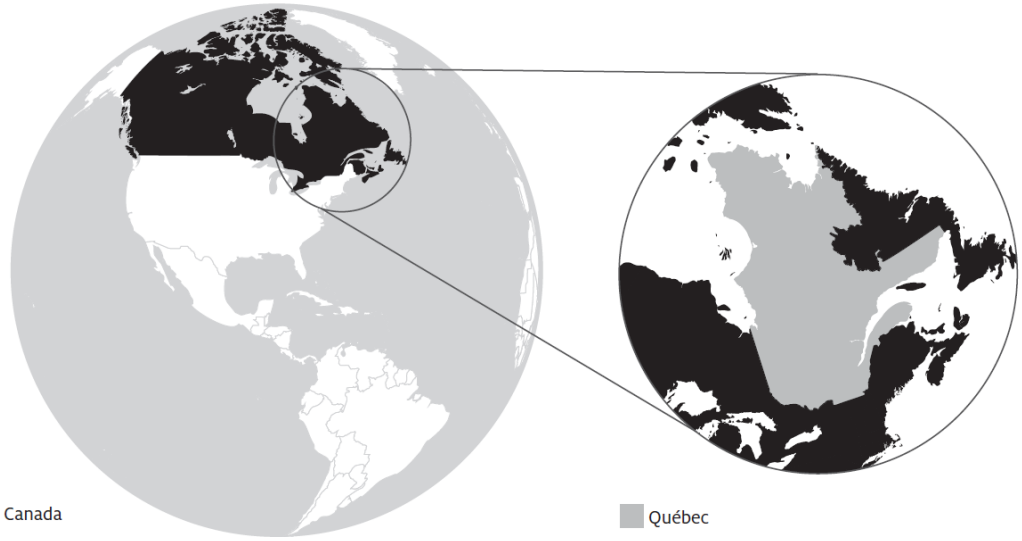

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Content

1. Essential Facts and figures

1.1. Canada

According to the 2016 Census, the Canadian population was 36,286,400 inhabitants. Quebec's population was 8,326,089, or 22.9% of Canada's. Quebec's population growth is slower than elsewhere in Canada, partly because some provinces (i.e. Ontario, Alberta and British Columbia) have experienced greater economic growth, resulting in a positive net interprovincial migration. In addition, a lower proportion of immigrants settle in Quebec (between 18% and 20% depending on the year) compared to some provinces such as Ontario, which hosts nearly 40% of international immigration (Statistics Canada 2017d). On 1 July 2017, more than 31.7 million Canadians (86.3%) resided in one of four provinces: Ontario (38.7%), Quebec (22.9%), British Columbia (13.1%) or Alberta (11.7%). Ontario remained the country's most populated province, surpassing 14 million residents. The province with the smallest population was Prince Edward Island, with 152,021 residents. Quebec remained the second most populous province, followed by British Columbia and Alberta.[1]

The French-speaking population of Canada is mainly concentrated in Quebec (see Table 1). In 2016, just over 77% of Quebeckers reported French as their mother tongue, while 7.5% of the population declared English as their mother tongue, and 13% another mother tongue. The situation is reversed in the rest of Canada where the English language largely dominates. The province of New Brunswick is an exception, with a slightly smaller population reporting French as their mother tongue. The linguistic divide is therefore strongly territorialized in Canada.

More than 70 Aboriginal languages were reported in the 2016 Census. The number of Aboriginal people able to speak an Aboriginal language exceeded the number who reported an Aboriginal mother tongue. In 2016, 260,550 Aboriginal people reported being able to speak an Aboriginal language well enough to conduct a conversation.[2]

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[1] For details, see Statistics Canada (2017d) at https://www150.statcan.gc.ca/n1/pub/91-215-x/2017000/sec1-eng.htm (accessed on 20 June 2019).

[2] For details, see "Census in Brief, The Aboriginal languages of First Nations people, Métis and Inuit" available online at https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016022/98-200-x2016022-eng.cfm (accessed on 20 June 2019).

Table 1. Mother tongue, provinces and territories (2016)

(E = English; F = French; NOL= Non-official languages[3])

	Total	**E**	**F**	**NOL**	**E and F**	**E and NOL**	**F and NOL**	**E, F and NOL**
Canada	**34,767,255**	**19,460,855**	**7,166,705**	**7,321,060**	**165,325**	**533,260**	**86,145**	**33,900**
Newfoundland and Labrador	515,680	499,705	2,355	11,920	585	1,025	60	30
Prince Edward Island	141,020	128,005	4,865	7,160	485	460	30	20
Nova Scotia	912,295	830,220	29,465	44,550	3,445	4,180	225	210
New Brunswick	736,280	472,725	231,110	23,150	7,280	1,535	330	145
Quebec	8,066,560	601,155	6,219,665	1,060,830	72,395	27,485	67,075	17,950
Ontario	13,312,870	8,902,320	490,720	3,553,925	54,045	288,285	12,565	11,010
Manitoba	1,261,620	900,610	40,525	288,985	4,365	25,965	700	475
Saskatchewan	1,083,235	892,620	15,095	156,960	2,045	15,925	315	280
Alberta	4,026,650	2,991,480	72,155	870,945	10,225	77,520	2,685	1,640
British Columbia	4,598,415	3,170,110	57,425	1,267,465	10,065	89,140	2,105	2,115
Yukon	35,560	29,110	1,570	4,210	220	420	15	15
Northwest Territories	41,380	31,765	1,170	7,625	145	630	35	10
Nunavut	35,690	11,020	595	23,345	25	690	15	5

Source: Statistics Canada (2017a).

1.2. Québec

Quebec's population growth rate is lower than the Canadian average. Since 1971, Quebec's demographic weight has decreased by 5%. At that time, it represented more than a quarter of the Canadian population. This proportion should continue to fall to around 21-22% in 2038 (Statistics Canada 2015).

[3] In Canada, "official languages" refer to English and French. "Non-official languages" refer to all other languages.

Quebec's population is not homogeneous, both linguistically and in terms of ethnocultural composition. In 2011, 78.1% of the population had French as their mother tongue, compared to 7.7% with English, 12.3% with another language and 2% with multiple mother tongue languages (Office québécois de la langue française 2016).[4] However, Anglophones are mostly grouped in the Greater Montreal area, where they accounted for 11.6% of the population in 2011. Their presence is even more pronounced on the Island of Montreal (16.6%), where Francophones now account for less than half of the population (47%).[5] It is also important to note that the proportion of the population with a mother tongue other than English or French on the Island of Montreal was 32.3% in 2011 (or 33.1% if we add those who claim to have two mother tongues), almost double the population with English as their mother tongue. However, the situation is quite different when we consider the language most often spoken at home since the use of English (23.4%) significantly exceeds that of other languages spoken at home by allophones (18.9%).[6]

Linguistic transfers historically tend to favour English, although this movement has been greatly reduced over the last 40 years. At the same time as the proportion of the English-speaking population since Canada's creation in 1867 was gradually decreasing, it was diversifying profoundly as a result of the influx of immigrants from other parts of the world as well as by linguistic transfers from francophones or allophones to English. Given the lower socio-economic status of the Francophone majority until the 1960s, for reasons of promotion and socio-economic mobility, many immigrants adopted English and chose to send their children to school in English (Bourhis and Lepicq 2002, 141). Over the generations, English became the mother tongue of a large part of the population of origin other than British or French. This means that despite the fact that the majority is still French-speaking, linguistic transfers to English are significantly greater than the demographic weight of native English speakers. Although transfers to French are significantly larger than they were in the past, this reflects the French language's relatively weak ability to attract speakers in comparison to English, particularly in a context marked by a French-

[4] According to Statistics Canada (2016), "'(m)other tongue' refers to the first language learned at home in childhood and still understood by the person at the time the data was collected. If the person no longer understands the first language learned, the mother tongue is the second language learned. For a person who learned two languages at the same time in early childhood, the mother tongue is the language this person spoke most often at home before starting school. The person has two mother tongues only if the two languages were used equally often and are still understood by the person."

[5] To this percentage could be added the population that has, in addition to French, another mother tongue (3.2%).

[6] Allophones are Canadians speaking a language other than English, French or an Aboriginal language. In other words, allophones speak immigrant languages that are referred to as non-official languages (NLO) as Table 1 shows.

speaking minority in North America and the process of globalization where English is the lingua franca. English remains the language of economic integration in Montreal, which explains its great attraction. Low-income immigrants tend to adopt French, while those with high incomes tend to turn to English (Castonguay 2008). Finally, to appreciate the importance of the English language in Quebec, it is more appropriate to take into account the language of use rather than the mother tongue. In economic, social and political life, it is this population that seeks the maintenance, if not the enlargement, of its linguistic rights.

In short, Quebec is fractured along a fairly important linguistic line. The presence of English and languages other than French is significant in the Montreal area, while in the rest of Quebec French is the mother tongue of 92.8% of the population (Office québécois de la langue française 2016).

Quebec is also diverse in terms of the ethnic origin of its inhabitants. First, it should be noted that 4% of the population report a single or multiple Aboriginal origin. In 2011, immigrant population was 12.6%, which is still less than the proportion present for all of Canada (20.6%). Nearly all immigrants choose to settle in the Greater Montreal area, while barely 3.8% settle in other regions of Quebec (Ministère de l'Immigration, de la diversité et de l'Inclusion 2014). In 2016, the "visible minority"[7] population represented 13% of the Quebec population and 22.3% of the Canadian population (Statistics Canada 2017c).

1.3. Language and Educational Policies

The Official Language Act of 1974 made French the language of public administration, public utilities and professional occupations, business, labour and, to a lesser extent, primary and secondary education. In 1977, the Charter of the French Language (CFL) was adopted. In addition to pursuing bolder goals than the previous legislation with respect to the francization of public institutions and businesses, the integration of immigrant children into French school networks and public signage, the CFL clearly asserted the Quebec government's determination to make Quebec the leading place of reference for the North American Francophonie. In fact, it was a question of

[7] This category, used by Statistics Canada, refers to "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour" (Statistics Canada 2017b). The visible minority population consists mainly of the following groups: South Asian, Chinese, Black, Filipino, Latin American, Arab, Southeast Asian, West Asian, Korean and Japanese.

building an essentially French Quebec, of changing the balance of power for the benefit of French, with the explicit aim of encouraging a reconquest by the French-speaking majority of Quebec of the influence it has on the levers of the economy. The legislation essentially sought to consolidate the social environment in which the French language evolves in Quebec. Nevertheless, the CFL has acquired a symbolic status of primary importance for the Quebec collective identity (Rocher 2002).

In addition to confirming French as an official language, Quebec's language policy is based on a number of principles. The first emphasizes the decisive importance for any society to establish the presence of a predominant language. In Quebec, for example, all must know the French language without the state preventing the learning of other languages. The affirmation of French, designated as a common language, calls for a second principle, respect for minorities, their languages and their cultures. In this respect, English-speaking Quebeckers are considered to be the largest minority and represent an irreducible component of society. In short, the language policy is part of a social justice perspective insofar as the affirmation of a language that is both common and national aims to enhance the status of French so that the majority population no longer suffers prejudice (in economic as well as cultural terms) and can guarantee its own sustainability in a North American environment where they form a minority. Without surprise, this change in status and power relations between languages has not been enthusiastically received by Anglophones and Allophones.

Although the CFL has decreed that French be the official language of Quebec, many articles grant rights to individuals belonging to the English-speaking historic minority. The preamble to the law states that the National Assembly pursues its goal of Francization, "in a spirit of fairness and open-mindedness, respectful of the institutions of the English-speaking community of Quebec, and respectful of the ethnic minorities, whose valuable contribution to the development of Quebec it readily acknowledges." However, for many provisions, when the use of French is not exclusive, the legislature preferred to incorporate the possible use of English by using the expression "in a language other than French".

First, in terms of the language of legislation and justice, the CFL extends the rights granted to English under the British North America Act of 1867 (i.e. the Constitution Act of 1867)[8] and the Constitution Act of 1982. Quebec is subject to both these documents and cannot derogate from them. In addition, several articles of the CFL explicitly mention English. In terms of the language of the administration, the law specifies that in the health and social services, the documents in the clinical files may be written in English. A municipality obtains bilingual status when more than half of its residents are native English speakers and can therefore offer all services in both languages. But it is in terms of the language of instruction that the rights granted to the historic minority are the most elaborate. Section 73 of the CFL reiterates the minority language education rights enshrined in the Canadian Charter of Rights and Freedoms. Thus, access to publicly funded schools is granted to "a child whose father or mother is a Canadian citizen and received elementary instruction in English in Canada, provided that instruction constitutes the majority of the elementary instruction he or she received in Canada." It is the same for children who stay in Quebec temporarily and who can receive instruction in English.

In many ways, the use of English is permitted since a high number of articles in the CFL authorize the use of "a language other than French". This remedy is permitted in the following cases: the designation of a communication route (road, bridge, etc.); internal communications or between public bodies (school boards, municipalities, health or social service institutions) recognized as being addressed to a majority English-speaking population; the publication of an offer of employment, provided that it is published simultaneously in a newspaper circulating in French; the addition to the French text of an inscription on a product, on its container or on its packaging, on a document or object accompanying this product, including the instructions for use and the guarantee certificates; the availability of software provided that the French version is accessible under conditions that are at least as favourable; the drafting of membership contracts, contracts containing printed standard clauses, as well as the related documents, if this is the express wish of the parties; posting (predominantly French) for reasons of health or public safety; public display and commercial advertising, provided that French is clearly predominant; public display of religious, political, ideological or humanitarian messages, provided they are not for profit; the

[8] The British North America Act of 1867 was renamed Constitutional Act of 1867 after the patriation of the Constitution in 1982.

name of a business, provided that, in its use, the French language name appears at least as prominently.

It is important to note that articles relating to the use of French as a working language only apply to businesses with more than 50 employees. This factor needs to be considered since small firms dominate the service sector (73%), while they are less prevalent in the manufacturing sector (24.2%) and almost non-existent in the sector of the extraction of natural resources (2.8%) (Bouchard 2008, 12). In 2011, in Quebec as a whole, 81.7% of the population reported using French most often at work. However, the situation was different in the Montréal metropolitan area, where this proportion fell to 59.5%. In Montreal, 28.4% of workers used English most often, 26.9% said they used it regularly and 10.7% spoke English as often as French. There is therefore a significant difference in the use of French depending on whether you work in the Montreal area or elsewhere in Quebec (Statistics Canada 2013). In Quebec, the predominant use of French in the workplace fell from 82.0% in 2006 to 79.7% in 2016. On the other hand, the equal use of French and English rose from 4.6% in 2006 to 7.2% in 2016 (Statistics Canada 2017e).

Since its entry into force in 1977, the CFL has been the subject of numerous court challenges. All these judicial remedies, without exception, have reduced the scope of certain provisions of the Charter and forced the Quebec government to amend it. For example, in the case of *Quebec [Attorney General] v. Quebec Association of Protestant School Boards* (1984),[9] the Supreme Court of Canada, in light of section 23 of the Canadian Charter of Rights and Freedoms,[10] declared unconstitutional the CFL's provision that granted the right to education in English only to children whose parents had received much of their instruction in English in Quebec. The CFL was amended and this right was extended to children whose parents had attended English school in other parts of Canada. In the case of *Valérie Ford v. Quebec (Attorney General)* (1988),[11] the Supreme Court found that the exclusive use of French in public signage and commercial advertising contravened freedom of expression, while noting that the clear predominance of French would be acceptable. This is to say that the Canadian courts, while supporting the general objectives of the CFL, have

[9] Supreme Court of Canada, *Quebec [Attorney General] v. Quebec Association of Protestant School Boards*, [1984] 2 SCR 66.
[10] Section 23 of the Canadian Charter of Rights and Freedoms guarantees minority language educational rights to French-speaking communities outside Quebec, and to English-speaking minorities in Quebec. It applies to all provinces and territories.
[11] Supreme Court of Canada, *Valérie Ford v. Quebec (Attorney General)*, [1988] 2 SCR 712.

helped to diminish its scope and, as a result, to reinforce the linguistic rights of the English-speaking minority.

All in all, even if French is designated as the official language of Quebec, the linguistic rights of the English-language historic minority have not been abolished. Such has never been the intention of the legislator. And, if not, it would not have been possible since Quebec cannot avoid its constitutional obligations with respect to the status of English in the National Assembly and in the courts. The freedom of choice has certainly been limited since the presence or predominance of French has been asserted in areas where the latter was formerly absent, little present or simply marginalized. Similarly, access to instruction in the minority language is the subject of guidelines, but these are particularly restrictive for individuals belonging to the French-speaking majority or immigrants who can no longer send their children to English school.

2. Autonomy and State Structure

Canada is a constitutional monarchy with a British-type parliamentary system. It is a federal state composed of 10 provinces[12] and three territories.[13] While provinces have their own constitutional powers, the territories exercise only delegated powers under the authority of the parliament of Canada.

Canada adopted the federal form of government as early as 1867. This means that the Canadian Constitution[14] determines areas that are either federal, provincial or shared. While the framers of Canada's Constitution gave substantial powers to the provincial governments, in the form of a list in section 92 of the Constitution Act of 1867, which include jurisdiction over social policy, health policy and natural resources policy, they also gave a number of powers to the federal government to ensure its dominance. Those powers include the following (Reesor 1992, 80-82):

- the almost unlimited power to levy both direct and indirect taxes;

[12] Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan.
[13] Northwest Territories, Nunavut and Yukon.
[14] The Constitution of Canada is not a single document, but several different Acts that collectively make up the highest levels of Canadian law. The most important of these documents are the Constitution Act of 1867 (formerly known as the British North America Act of 1867) and the Constitution Act of 1982.

- the power of the federal parliament to spend as it sees fit, even in areas of provincial jurisdiction, provided that provincial compliance with a federal spending program remains voluntary;
- the power of parliament to legislate for the "peace, order and good government" of Canada (the residual power), though this power has been severely circumscribed by the courts;
- the power to declare certain "works" coming under provincial jurisdiction to be for the general advantage of Canada and, therefore, to be regulated by federal law; the uranium mining industry is an example of an industry declared to be for the general advantage of Canada;
- the powers of reservation and disallowance, which essentially enable the federal government to strike down provincial legislation; these powers have fallen into disuse.

Some provisions of the Constitution provide for asymmetrical treatment (Smith 2005). For example, section 94 recognizes the use of civil law in Quebec and section 133 stipulates that English or French may be used in the legislatures and courts of Canada and Quebec, with no other provinces mentioned.

The framers of the Canadian federation set out to create a federal system with a dominant central government. However, the handiwork of the founders was almost totally undone by the judgments of the Judicial Committee of the Privy Council (JCPC), which is a committee of the British House of Lords that served as an appellate court for the nations of the British Commonwealth (and still does for some countries). While Canada has had a Supreme Court since 1875, it did not become the final court of appeal until 1949. During its time as Canada's last court of appeal, the JCPC consistently favoured the provinces. Peter Russell points out that "[b]etween 1880 and 1896 the Judicial Committee decided eighteen cases involving twenty issues relating to the division of powers. Fifteen of these issues (75 per cent) it decided in favour of the provinces" (Russell 1993, 42). The tilt of the JCPC continued throughout its time as Canada's final appellate court. The central government's residual power, its trade and commerce power, and its treaty power were among those powers that were severely circumscribed by the JCPC.

The Great Depression and the Second World War forced the federal and provincial governments to address the new roles that they would be called upon to play. The financial crisis that accompanied the economic crisis started a debate on the division of taxation powers and the federal government's ability to act. Nevertheless, responsibility for activities linked to public welfare was

held by the provinces that, to meet their obligations, had to count on conditional grants from the central government. Some were strongly opposed to any transfer of powers to Ottawa, either claiming the autonomy of the provinces (Quebec), or refusing any redistribution of wealth from the wealthy provinces to the poor provinces (Ontario). Given this, Canadian federalism gradually abandoned the classical vision of each order of government being sovereign in its jurisdictions, to be substituted by a cooperative federalism more open to overlapping and to informal compromises. This centralizing swing was therefore undertaken for pragmatic reasons of efficiency, avoiding the need for constitutional change, with the exception of two amendments allowing the federal government to start up programs for unemployment insurance (1940) and old age pensions (1951). From the end of the 1950s to the mid-1970s, the rapid growth in provincial government activities, associated with the dynamic of province-building, helped make federal-provincial relations more complex and thus favoured the implementation of new coordination mechanisms. At the same time, the expansion of provincial governments stimulated the formation of social groups who further embraced the views of provincial governments. Quebec experienced a profound transformation of nationalist-inspired claims that reinforced the autonomist designs of the provincial government, and Alberta promoted a more regionalist vision. Often provincial governments became the spokespersons and defenders of the specific needs of provincial communities. This is how cooperative federalism was replaced by executive federalism, which is characterized by frequent meetings between the Canadian prime minister and the provincial premiers (Smiley 1987, 83).

In trying to respond to the Quebec government's demands for more autonomy and resources in areas of provincial jurisdiction, if not to increase the latter, a period of greater fiscal decentralization came to be. In addition to the constitutional asymmetry already mentioned, practices have been put in place that allow Quebec to be treated differently. Following pressures from Quebec, which sought to increase its fiscal capacity, in 1965 the federal government passed a law on established programs financing, allowing provinces to withdraw from several shared-cost programs (in the areas of hospital insurance, old age pensions, health and training), while receiving financial compensation through the transfer of tax points. Only Quebec chose to opt out. This accorded to Quebec a *de facto* special status in the federation, even though this option was offered to all provinces (although they did not request it).

The Canadian parliament adopted provisions of an asymmetrical nature. For example, section 6 of the Supreme Court Act stipulates that three of the Court's nine judges are appointed from Quebec. Administrative agreements have also been concluded with the government of Quebec on immigration (1991), relations with foreign countries, mainly France (1971 and 1977), manpower training (1996 and 2000), health care financing (2004), etc. (Pelletier B. 2005).

All in all, the federal form was adopted, as mentioned above, to reconcile national, linguistic and religious differences when the Dominion of Canada was created by the British North America Act of 1867. These differences are even more important in that they are geographically concentrated. The fact that the Quebec government wanted to strengthen its political autonomy is not a historical anomaly, because 90% of Canadians with French as their maternal language reside in Quebec, even though French Canadians continue to represent approximately 25% of the Canadian population. In response to the inferior socio-economic status French Canadians had up to the beginning of the 1960s, the Quebec government sought to intervene more directly in the economy and to develop its social and cultural activities in order to preserve and promote the distinct nature of Quebec society.

It is in this context that Quebec is one of the few provinces to attach great importance, on the one hand, to the respect of provincial jurisdictions and on the other, to an increase in provincial autonomy. Quebec's demands contributed to the braking of political centralization, even though they were not able to thwart it entirely. To avoid granting Quebec a special status in the federation, the federal government often offered all provinces that which only Quebec has demanded. As Stevenson notes, "efforts to deal with the 'Quebec problem' have spread provincialist tendencies, originally centred in Quebec, to other regions of the country," (Stevenson 1985, 170) particularly in the West, which maintains that its interests are rarely taken into account by the central government and that politically it is poorly represented.

3. Establishment and Implementation of Autonomy

3.1. From French America to the Canadian Federation

North America has been populated since time immemorial by First Nations. In 1534, Jacques Cartier explored the Gulf of St. Lawrence and took possession of the territory in the name of the

King François I of France. The short history of New France ended abruptly with the British conquest marked by the military defeat of the French in Quebec in 1759 and Montreal in 1760. The history of intercommunity relations goes back to this key moment in the Conquest (*La Conquête*). To ensure the durability of this new territory, from then on, the British Crown had to accept compromises with the population under its authority. These compromises continue to define contemporary Canada.

The Quebec Act of 1774 extended the boundaries of the province, and, among other things, restored the rights of the owners of *seigneuries* obtained under the old regime,[15] abolished the oath of allegiance and replaced it with an oath of loyalty to the Crown, and recognized the use of French private law (regulating relations among individuals) resulting from the civil law tradition, while retaining the common law for public law (governing relations between the citizens and the state). In addition, it allowed Catholics, who were the majority, to continue to profess their religion and the clergy to collect tithes and retain all their possessions. The Quebec Act is important in that it lays one of the foundations for the Canadian political system still in effect today. It recognizes the distinctive character of the province of Quebec by enshrining the principle of bijuralism in the territory (i.e. combining the French Civil Code and the British common law), preserving the cultural identity of the inhabitants of the territory conquered, protecting the Catholic religion and preserving the interests of elites (including clergy and lords) to ensure their loyalty to the Crown at a time of political turmoil in the 13 American colonies. We can see the institutional and legal consecration of the founding duality of Canada, the French and British populations. This compromise is not the result of British adherence to moral principles such as generosity, magnanimity or solicitude for the conquered; it rather translates a pragmatic reality that the French population is a majority in the territory and maintaining its loyalty is essential to the interests of the empire.

The Constitution Act of 1791 marks the birth of parliamentary institutions in Canada. It has 50 articles and makes substantial changes to the institutional provisions of the Quebec Act of 1774. It divides the territory into two provinces, Upper and Lower Canada, along the route of the Ottawa

[15] The seigneurial system was established along the St. Lawrence Valley in the early days of the French colony and attributed territories as fief to nobles and religious communities, the latter accounting for one quarter of the seigneurial lands. For details, see Library and Archives Canada at http://www.bac-lac.gc.ca/eng/discover/exploration-settlement/new-france-new-horizons/Pages/settlement.aspx (accessed on 20 June 2019).

River.[16] Political tensions fuel a deep dissatisfaction with the regime established in 1791 and lead to the insurrections of 1837–1838 that erupt in both Canadas. The reformist political elites seek to conquer the freedoms hampered by the powers exercised by the Crown's representatives, to obtain responsible government (which compels the executive to answer for its actions before the House of Assembly) and to assert Canada's autonomy vis-à-vis Great Britain (Ouellet, 1976; Morton 1979; Buckner 1985). In Lower Canada, discontent is more widespread. It is also a national struggle against colonialism and is strongly inspired by the American republican model (Bernard 1983; Filteau 2003; Harvey 2005).

The Union Act of 1840 abolishes the institutions of Upper and Lower Canada and replaces them with one government. French Canadians oppose it in large numbers. It is an attempt to "minoritize" and subordinate former Lower Canada to the interests of the British Empire in North America (Vaugeois 1962; Séguin 1968; Comeau 2016). The number of elected representatives in the House of Assembly is 84, half from Canada West (former Upper Canada), the other from Canada East (former Lower Canada), despite the fact that the population of the latter region accounts for almost 60% of the total population. This under-representation of mostly French-speaking population of Canada East allows English speakers to dominate the House of Assembly. Executive power is exercised by the Executive Council whose members are also appointed by the governor and have a veto over decisions passed by the House.[17] The governor's freedom of action and control over the Executive Council are later diminished by the application of the principle of responsible government in 1848. In doing so, the members of the Executive Council are henceforth deputies elected as members of the majority party who are accountable to the House. The governor still retains a veto over decisions made by the same House given that it must give the royal assent to any bill.

Several factors made the continuation of the Unionist experience problematic: the end of the protectionist policy in Britain, the demographic changes that have resulted in the population of Canada West exceeding that of Canada East since the 1850s, the American Civil War, the pressure of traders and bankers and the need to finance the construction of a transcontinental railroad. These

[16] Lower Canada maintained its bijuralism: civil law in matters of private law and common law in matters of public law.
[17] English is the only official language of parliament, government documents and bills.

circumstances force the political class to consider a new constitutional formula as well as new parliamentary institutions (Paquin 1999; Cardin and Couture 1997).

The British North America Act of 1867 (i.e. Constitution Act of 1867**)** united the three British colonies in North America (i.e. Canada, Nova Scotia and New Brunswick) into a Dominion and established the Canadian Confederation. The former colony of Canada was divided into the provinces of Quebec and Ontario. The adoption of a federal system of government was presented to the people of Quebec as providing a range of protections that would allow them to pursue their national destiny. For some French Canadians in 1867, Confederation was not considered to be a threat, but rather as a necessary step in building a predominantly French Catholic state in British North America. It was presented, defended and evaluated based on the degree of autonomy it gave French Canadians. For many people of Lower Canada's former colony, Confederation granted them powers of a quasi-independent state and promised conditions that would guarantee their survival (Silver 1997). The Constitution Act of 1867 exclusively devolved some powers to provincial governments (control over health, education, municipalities, marriage, property and civil rights, interprovincial trade, etc.). On the other hand, affairs of national importance or public interest, such as military and economic issues (regulation of trade and commerce, transportation, and communications), were attributed to the central government. These principles were endorsed by sections 91 to 95 of the Constitution Act of 1867 (Pelletier 2002). Some of these powers enabled the central government to override provincial decisions under certain circumstances (Watts 2008, 26).

3.2. Québec's Struggle for Provincial Autonomy from the 20th Century Onwards

Provincial autonomy became a recurring theme in Quebec's politics and in the conflictual relationships between provincial and federal governments. During the Quebec elections of 1939, premier Maurice Duplessis, leader of the National Union (*Union Nationale)*[18] opposed the conscription, in the name of provincial autonomy, and asked the people of Quebec "to stand up to the tyrants of Ottawa […] to rise up against them so that Quebec can live and breathe the air of

[18] The *Union Nationale* was a Québec political party founded in 1935 and dissolved in 1989. The party won six provincial elections between 1936 and 1966. For details, see https://www.thecanadianencyclopedia.ca/en/article/union-nationale/ (accessed on 20 June 2019).

freedom" (Durocher 1969, 33–34, translation by the author). Like his predecessors, Duplessis insisted on respecting provincial jurisdiction. However, the Second World War led him to denounce Ottawa's control over taxes and, later, the "federal spending power" that the federal government justified by establishing the welfare state. Tensions over the creation of a family allowance program were another powerful indicator (Angers 1997).

Faced with the federal government's lack of regard for the sovereignty and autonomy of the provinces, and more particularly in an attempt to solve the constitutional problems, Duplessis created in 1953 the Royal Commission of Inquiry on Constitutional Problems, headed by Justice Thomas Tremblay (hereinafter "the Tremblay Commission"). This parliamentary initiative was important in that it illustrated how Quebec perceived Canadian federalism (Boismenu 2007; Rocher 2009).

Filed in February 1956, the Tremblay Commission's report covered the primary autonomist arguments developed by Justice Loranger in the 19th century and supported by all Quebec premiers since Honoré Mercier. The Tremblay Commission followed a classic "watertight compartments" definition of federalism. On the one hand, the focus was on the balance between unity and plurality trends and, on the other hand, the presence of two orders of equal and coordinated governments. Provincial governments were responsible for looking after the special interests of their political communities. The Tremblay Commission insisted that each level of government's role should be limited to the jurisdiction where it enjoys independence from the others. The principle of non-subordination has a prominent place in the construction of federal institutions. It is even "the system's primary and general idea, the one that applies to all authentic federal states" (Tremblay Commission 1956, 98, translation by the author). This idea was reflected institutionally through the distribution of powers, the balance between the Constitution (and rigidity to prevent it from being amended unilaterally, at least regarding the distribution of powers) and the supremacy of the courts. Therefore, the proper functioning of the federation was guaranteed by the presence of cooperation that opposed an attitude of domination and unification from the central government, as well as an attitude of independence and separatism from regional governments. Notions of compromise and a spirit of partnership were important because they condemned any disturbance of the delicate and careful balance in favour of one of the governments.

As Dominique Foisy-Geoffroy points out, “all the arguments developed in the report [of the Tremblay Commission] justify the autonomy of Quebec, in every proposed reform, based on the fundamental choice in favour of a spiritualist and personalist culture as part of the Christian West crisis” (Foisy-Geoffroy 2007, 266, translation by the author). In doing so, French Canada continued to be presented in its sociological dimensions, and the report did not support the political nationalism binding state and nation. Nevertheless, the province of Quebec needed to preserve its jurisdictional independence because it is the homeland, the political arena of French Canada and, in this respect, has a mission that distinguishes it from other provinces. Once the Tremblay Commission’s report was filed, Premier Duplessis blacklisted it for being politically explosive (Durocher and Jean 1971).

The election of a Liberal government led by Jean Lesage in 1960, marked a profound change in perception and strategy. Political autonomy was presented not as a means of limiting Ottawa’s deleterious influence, but rather as a means of political, economic and social restoration of the French-Canadian “people”.

The autonomous discourse thus took a new direction: the need to preserve French Canada’s traditional character gave precedence to the need to affirm its national identity. This required defending the powers conferred upon the provinces, powers considered essential to the task of modernization towards which Quebec was striving. For Jean Lesage, constitutional amendments were not absolutely necessary to obtain a particular status for Quebec.

However, the debates centred on the federal government’s proposal to repatriate the Canadian Constitution and propose an amending formula contributed to Jean Lesage’s decision to take a different course of action. The discussion of a new distribution of powers prevailed over the constitutional mechanics such as the amending formula. However, the amending formula, proposed by Ottawa and initially accepted by the Quebec Liberal government, was later perceived as a “straitjacket” and closed the door on any future expansion of provincial powers.

From the late 1960s, constitutional talks were no longer limited to the issues of repatriating the Constitution and a domestic amending formula, but they also touched on revising the distribution of powers, in an effort to modernize and clarify the fundamental law. This sought to limit growing federal government intrusions in areas of provincial jurisdiction (e.g. education, health, municipal affairs, natural resources, social assistance) and increase the government of Quebec’s jurisdiction

over areas such as communications, radio broadcasting, workforce training, social security, culture. As emphasized by Marc Chevrier, "in the view of Quebec governments, the reform of the division of powers came before any other reform. The issue was the coherence of tools needed to offer integrated and comprehensive public policies to the population of Quebec" (Chevrier 1996, 9).

If the Quiet Revolution's[19] state nationalism gradually led many Quebeckers to demand a new distribution of powers that will increase Quebec's provincial autonomy, it also witnessed the emergence of a political movement that increasingly advocated Quebec's sovereignty. The various officials who served as members of the Parliamentary Committee on the Constitution of Canada (1963-1968), recommended not merely a series of amendments to the Constitution, but rather a rewrite based on recognizing the two-founding-peoples thesis (Rocher 1991). Quebec believed it should have a right of veto over constitutional reform to reflect that it was the birthplace of one of the founding peoples of Canada. In short, the British North America Act of 1867 adopted a federative form of the state to account for the fundamental truth that it could not be modified without the participation and consent of Quebec.

Daniel Johnson, who became head of the *Union Nationale* in June 1966, proposed recognizing the equality of the two founding peoples. The logical outcome was the use of the Constitution as a tool to establish equality between French and English Canadians, the two primary "nations" on which Canada was built: "A new constitution should be designed so that Canada is not solely a federation of ten provinces, but a federation of two nations equal in law and in fact" (Johnson 1990, 124). Therefore, it meant equality of the two groups on a national scale. This equality could only be made possible by increasing Quebec's constitutional powers, such as social security, international relations, education and culture. Nevertheless, for Johnson it made little sense to revise the Constitution Act of 1867 because it was obsolete. Instead, he decided to try a more radical approach—to write a new Constitution. After failing to reach a satisfactory agreement, Johnson argued that Quebec would have no choice but to opt for independence. However, the ultimatum of independence sometimes referred to the French-Canadian nation and sometimes only to the Quebec territory. It was not Johnson who would break this ambiguity, but René Lévesque, the first

[19] After the election of the Lesage government, the term "Quiet Revolution" was quickly used to describe the rapid transformations of Quebec society.

Quebec Party (*Parti Québécois)*[20] leader to opt without question for the adoption of a new political status for Quebec.

4. Legal Basis of Autonomy

The autonomy of federated entities in Canada and the powers available to them are enshrined in the Constitution[21] through the articles identifying the powers vested in each level of government. However, it is only since the repatriation of the Constitution in 1982 that Canada has adopted a domestic amending formula. Prior to that date, any amendments had to be adopted by the United Kingdom's parliament (Hurley 1996).

There are five separate amending procedures depending on the purpose of the proposed amendments. Three procedures require the agreement of the provincial governments: general amendment procedure,[22] the unanimity procedure[23] and the special arrangements procedure.[24] According to the general procedure, the Constitution of Canada may be amended by the proclamation of the Governor General of Canada pursuant to resolutions of the Senate, the House of Commons and the Legislative Assemblies of at least two thirds of the provinces whose population represents at least 50% of the population of all provinces.[25] The general procedure applies to any amendment affecting the powers of the Senate and the method of selecting senators, the Supreme Court,[26] the attachment of parts of territorial lands to existing provinces and the creation of new provinces. The unanimity procedure is required to amend certain arrangements

[20] The *Parti Québécois* is a nationalist political party formed in Québec in 1968. The party was elected to its first term in office in 1976 and went on to hold two referendums on Québec sovereignty: one in 1980 and the other in 1995. For details, see https://www.thecanadianencyclopedia.ca/en/article/parti-quebecois (accessed on 20 June 2019).
[21] Canada's Constitution is composed of several statutes and orders, as well as generally accepted practices known as constitutional conventions. It includes the Constitution Act of 1867 and the Constitution Act of 1982, as well as acts and orders that brought new provinces and territories into the Canadian federation (e.g. Manitoba Act, 1870; Alberta Act, 1905; Newfoundland Act, 1949). For details, see https://www.thecanadianencyclopedia.ca/en/article/constitution/ (accessed on 20 June 2019).
[22] Section 42 pf the Constitution Act of 1982.
[23] Section 41 of the Constitution Act of 1982.
[24] Section 43 of the Constitution Act of 1982. It regards amendments to the Constitution in relation to any provision that applies to one or more, but not all, provinces.
[25] Section 38 (1) of the Constitution Act of 1982.
[26] Except amendments regarding the composition of the Supreme Court of Canada for which the unanimity procedure applies.

affecting the Office of the Queen, the Governor General or the lieutenant governors, the proportion of the number of members in the House of Commons in each region, the use of French or English in the federal parliament and the composition of the Supreme Court of Canada. According to the special arrangements procedure, amendments regarding alteration of provincial borders or the use of English or French within a province require the consent of the province(s) affected. Finally, the last two procedures regard unilateral amendments by the federal parliament[27] and by provincial legislative assemblies.[28]

The amendment to the Constitution proved to be a difficult and politically perilous exercise. Two attempts (1987–1990 and 1990–1992) were aborted. For political actors, significant and structural changes are no longer considered a politically viable avenue. However, minor amendments were adopted. For example, in 1993 the province of New Brunswick officially became bilingual. In 1997, an amendment allowed Quebec to replace the denominational education system with a language-based system. In 1999, an amendment split the Northwest Territories and created the territory of Nunavut.

In short, the amending formula is very rigid with respect to any change in the division of powers between orders of government or to changes to federal institutions. It is more flexible in addressing issues that affect only one or a limited number of provinces.

The federal government and the provinces sometimes circumvent this rigidity by adopting, through the conclusion of intergovernmental agreements, policies that allow the federal government to intervene in provincial areas of jurisdiction even if a textual reading of the Constitution would not allow it to do so. A recent example of this process follows the Supreme Court of Canada's 2011 decision not to permit the establishment of pan-Canadian securities regulation under the authority of a single regulator.[29] In 2013–2014, the federal government proposed the establishment of a Cooperative Capital Markets Regulatory System despite the opposition of many provinces, including Quebec. In 2018, the Supreme Court of Canada endorsed this legislative framework.[30] So far, five provinces and one territory—Ontario, British Columbia, Saskatchewan, Prince Edward

[27] Section 44 of the Constitution Act of 1982. Subject to sections 41 and 42, the federal parliament may exclusively make laws amending the Constitution in relation to the executive government or the Senate and House of Commons.
[28] Section 45 of the Constitution Act of 1982. Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.
[29] Supreme Court of Canada, *Reference re Securities Act*, [2011] SCC 66, [2011] 3 SCR 837.
[30] Supreme Court of Canada, *Reference re Pan-Canadian Securities Regulation* (2018) SCC 48.

Island, New Brunswick and Yukon—agreed to participate. Quebec may continue to govern this area, but its capacity for action has been greatly diminished.

5. Autonomous Institutions

In the Canadian executive federalism (Brock 2003; Savoie 2003; Watts 2008; Benz 2011; Laforest and Montigny 2013), federal, provincial and territorial cabinets are responsible for intergovernmental relations, so that intergovernmental agreements are directly negotiated and concluded by the executive MPs who are also members of the majority party in the House. Therefore, while ministers (or officials) make important decisions, parliamentarians are left to debate about the form of legislation and ratify the executive's decisions. The principle of parliamentary sovereignty is thereby diminished, to the extent that the executive's leaders select and define key issues beyond the Parliament's control (Laforest and Montigny 2013). Moreover, it is the principles of transparency, accountability and citizen engagement that are reduced (Savoie 1999). Does this mean that parliamentary democracy and intergovernmental relations are incompatible? Not quite. Some believe that intergovernmental relations are better governed by rules (Poirier 2004; Poirier 2005); that the provinces need to find the means to scrutinize agreements before they are negotiated in camera (Simeon and Nugent 2008), or that citizens participate in the decision-making process through advisory committees (Meekison et al. 2004), reducing the executive's monopoly and, consequently, rebalancing and restoring some of the Parliament's prerogatives (Simeon and Cameron 2002).

5.1. The Parliament

The parliament of Quebec's role within the Canadian political system is typical of a British-inspired parliamentary system, a "soft" separation between the branches of government. It consists of the Lieutenant Governor[31] and the unicameral National Assembly which currently has 125 members, elected in general elections. The first-past-the-post system elects the candidate who receives the highest number of votes in a constituency. Although the party concept is central to the

[31] The Lieutenant Governor is the Queen's representative in each of the Canadian provinces. He/she is appointed by the British Crown on the federal government's recommendation.

system, it is heavily diluted in the parliamentary process in that it no longer involves a political party, but instead a parliamentary group. However, not all parties with elected candidates are considered a parliamentary group. As stated in the standing orders of the National Assembly, "only a party that qualifies under the rules of parliamentary procedure shall be considered a parliamentary group. Any member not having been returned under such a party will, once he or she has arrived at the National Assembly, join a recognized parliamentary group or sit as independent members" (Bonsaint 2012, 174–175, translation by the author). A parliamentary group is any group of no fewer than 12 elected members of the National Assembly (MNA) of the same political party or any group of MNAs returned by a political party that has received at least 20% of the vote in the most recent general election.

The parliamentary group status is not insignificant, since it grants rights to its MNAs and provides them with numerous advantages associated with parliamentary proceedings. For example, during debates it enables them to have a greater voice during proceedings in the House (Bonsaint 2012, 173–175). In other words, the more time MNAs have, the more opportunities they have to voice their opinions and, consequently, to get their message across. Finally, parliamentary groups have a research budget and an additional remuneration is paid to MNAs who fulfil specific duties, among other things.

5.2. The Government

Canada is a constitutional monarchy and the executive power is vested in the Crown which is represented by the Governor General at the federal level and by Lieutenant Governors at provincial level. Executive power is therefore exercised on the basis of a number of conventions that are not, by definition, enshrined in the Constitution. The Governor General is appointed by the monarch on the advice of Canadian prime minister. The Lieutenant Governor of Quebec is appointed by the Governor General on the prime minister's advice. He/she opens each session of the provincial legislative assembly, provides royal assent to (or withholds assent from) provincial legislation and swears in Quebec's Executive Council (Conseil exécutif du Québec). The Lieutenant Governor and the Executive Council (i.e. prime minister and cabinet ministers) form the government of Quebec. The prime minister of Quebec chooses his/her ministers among elected members of

his/her political party. By constitutional convention, the latter come from the legislative assembly, but exceptionally, a minister may not have a seat in the provincial parliament.

5.3. The Judiciary

At the first level of the judicial system are the provincial or territorial courts whose judges are appointed by their respective governments. All judges of the higher courts are appointed by the federal government. In Quebec, the courts of first instance are the municipal courts, the Court of Québec, the Superior Court of Quebec, the Human Rights Tribunal and the Federal Court.

The Court of Quebec is composed of three divisions (civil matters, criminal and penal matters, and youth matters). Judges of the Court of Quebec are appointed by the government of Quebec. The Superior Court of Quebec deals with civil, administrative and criminal matters. It is the court of original jurisdiction, so it hears in first instance, and sometimes on appeal, all cases not expressly assigned to the jurisdiction of another court or administrative body. Judges of the Superior Court of Quebec are appointed by the federal government. The Human Rights Tribunal deals with matters of discrimination, harassment or exploitation prohibited by the Quebec's Charter of Human Rights and Freedoms. The Tribunal hears cases brought forward by the Human Rights and Youth Rights Commission (*Commission des droits de la personne et des droits de la jeunesse*)[32] and, under certain circumstances, by private parties.[33]

The Court of Appeal of Quebec is the general court of appeal and, as such, is the highest provincial court. It deals with civil cases arising from judgments from the Superior Court or the Court of Québec. In criminal matters, it has jurisdiction to hear appeals from verdicts and sentences issued pursuant to both the federal Criminal Code and the provincial Code of Penal Procedure.[34]

The Federal Court hears cases dealing with matters which are federal government responsibilities under the Canadian Constitution, such as administrative law, aboriginal law, citizenship,

[32] The Human Rights and Youth Rights Commission is a government agency created by the Quebec's Charter of Human Rights and Freedoms. For details, see http://www.cdpdj.qc.ca/en (accessed on 20 June 2019).
[33] For details regarding the Human Rights Tribunal, see http://www.tribunaux.qc.ca/mjq_en/tdp/index-tdp.html (accessed on 20 June 2019).
[34] For details regarding the jurisdiction of the Court of Appeal of Quebec, see http://courdappelduquebec.ca/en/about-the-court/jurisdiction/ (accessed on 15 June 2019).

immigration and refugee law.[35] The Federal Court of Appeal is a bijural and bilingual itinerant court with jurisdiction extending throughout all of Canada. The Court may sit in various cities across Canada including Quebec City and Montreal.[36]

The judicial system is overseen by the Supreme Court of Canada. Since 1949, it has been the highest court of appeal. It is composed of nine judges, three of whom must be of civil law tradition and are reserved for Quebec. As the Supreme Court pointed out in a case concerning the rule of eligibility, this particularity is intended to respond to "its dual purpose of ensuring that the Court has civil law expertise and that Quebec's legal traditions and social values are represented on the Court and that Quebec's confidence in the Court be maintained."[37]

6. Autonomous Powers

In the Canadian federation, the form and distribution of powers are similar to those in the United States and Australia in the sense that administrative duties are conferred on the level of government granted legislative responsibility (except for criminal law). However, Watts (2008, 122) points out that Canada is different from the United States, Germany and Australia in that the range of shared powers is much narrower. Most powers are attributed explicitly to a specific level of government. In this regard, Canada is closer to the Belgian model (Watts 2008).

Canada adopted a federal system to reduce the problem created by the presence of profound linguistic and cultural differences. The idea of using federalism as a system of government was borrowed from the American experience (Smith 1988). Nevertheless, having in mind the recent American Civil War, the drafters of the Constitution wanted to better demarcate the powers granted to each order of government by favouring a federal model that was much more centralized than that of the United States.

During the debates on the adoption of the Canadian Constitution, the division of powers did not seem as important an issue as it became afterwards. The Fathers of Confederation rapidly agreed on a division of responsibilities between the Dominion and the provinces that was compatible with

[35] For details regarding the jurisdiction of the Federal Court, see https://www.fct-cf.gc.ca/en/ (accessed on 20 June 2019).
[36] For details regarding the jurisdiction and role of the Federal Court of Appeal, see http://www.fca-caf.gc.ca/fca-caf_eng.html (accessed on 20 June 2019).
[37] Supreme Court of Canada, *Reference re Supreme Court Act*, ss. 5 and 6, [2014] SCC 21, [2014] 1 SCR 433.

the goals of the time, namely: military defence, the integrated development of British North America and the maintenance of harmony between English- and French-speaking citizens (Smiley 1965).

Contrary to the American Constitution, Canada's defined powers are granted to the provinces. Hence, sections 91 to 95 of the Constitution Act of 1867established the legislative jurisdictions of each order of government. In general, the principal economic levers were granted to the federal government. In this spirit, the federal government can use all means of taxation it wishes, while provinces only have recourse to direct taxation. The financial needs of the provinces are in part met through federal grants.

It must also be noted that many powers are exclusive to each order of government, although the Constitution Act of 1867 established a few concurrent powers, particularly in the areas of old age pensions, agriculture and immigration.[38] The provinces can theoretically exercise their exclusive authority in the fields, among others, of: education, health, municipal institutions, works of a local nature, property and civil rights, natural resources and the administration of justice.[39] The federal parliament has exclusive legislative authority over, *inter alia*, trade and commerce, postal services, defence, fisheries, currency and banking and all other matters not assigned exclusively to the legislatures of the provinces.[40]

Additionally, the residual power, that is to say jurisdiction in areas not initially foreseen, belongs to the federal government and not the provinces. Finally, in aiming to clearly ensure the predominance of the federal government and to limit the autonomy of provincial legislation, the Constitution conferred upon the former the powers of reservation and disallowance, although today these powers have fallen into disuse.[41] This is how the Canadian Constitution, through multiple limitations on the provinces' ability to act, established the supremacy of the federal government over the other orders of government (Scott 1951).

In the mid-1990s, the provinces initiated consultations in order to define jointly the parameters of welfare in Canada. These discussions, mainly between provinces, were meant to establish an agreement on the social union intended to respect the principles of coordination and

[38] Sections 94A and 95 of the Constitution Act of 1867.
[39] Sections 92, 92A and 93 of the Constitution Act of 1867.
[40] Section 91 of the Constitution Act of 1867.
[41] Section 90 of the Constitution Act of 1867. The last case of disallowance occurred in 1943 (regarding an act passed by Alberta legislature) and the last case of reservation of provincial legislation by a Lieutenant-Governor took place in 1961 (in Saskatchewan).

interdependence. In February 1999, a final agreement on the social union[42] was signed by the federal government and all provincial governments, except that of Quebec. This agreement strengthens the federal government's ability to spend in areas of jurisdiction reserved to provinces. The federal government should collaborate with provincial governments to establish pan-Canadian priorities and goals in terms of health, post-secondary education, social welfare and services. The federal government has agreed not to create new initiatives in these areas without the consent of a majority of provinces. This allows the federal government to go ahead with an initiative without the consent of Ontario and Quebec, the provinces that have between them 60 percent of the population. Provinces are nonetheless entitled to decline participation in these initiatives as long as they can demonstrate having established similar programs. Moreover, the federal government has retained the right to utilize its powers to have transfers aimed directly to individuals or organizations in areas of exclusive provincial jurisdiction. The social union agreement confirms that the federal government is the guardian of welfare provisions, a power that it was not able to inscribe in the failed constitutional negotiations of 1987 and 1992 (Fortin et al. 2003).

7. Financial Arrangements

The general principle guiding the Canadian Constitution is that the federal government has access to all sources of revenue while the provinces have been given the power of direct taxation to finance the areas in which they operate (Stevenson 1993; Hale 2001). In 1867, there was no question of considering any form of economic decentralization. The federal government has been given, under section 91(3) of the Constitution Act of 1867, the ability to "raising of Money by any Mode of Taxation." However, the provinces also obtained taxing powers, even though at the time they were considered insignificant. Section 92 restricts provincial legislatures to the following sources of income: "Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes"; (…) Shop, Saloon, Tavern, auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local or Municipal Purposes." Despite the fact that federal taxing competence was plenary and absolute, provincial subordination was overturned by court decisions. As Magnet points out, "the substantive limitations braking provincial taxing competence

[42] The Social Union Framework Agreement is published online at http://scics.ca/en/product-produit/agreement-a-framework-to-improve-the-social-union-for-canadians/ (accessed on 20 June 2019).

is that the provinces confine themselves to taxing 'within the province' by enacting taxation which, economically speaking, produces effects limited to the provincial territory" (Magnet 1978, 534). Nonetheless, there is a significant gap between the revenues collected by the two levels of government. In addition to a vertical gap (the federal government having access to a greater pool of revenue), there is a horizontal difference simply because the tax base varies greatly from one province to another. This is due to different levels of industrialization and access to more or less abundant natural resources. It is easy to understand that tax revenues from fishing, as is the case in the Atlantic provinces, are significantly lower than those derived from the exploitation of oil or gas resources, as is the case in the provinces of Alberta and Saskatchewan.

In the post-war period, fiscal agreements on tax collection in exchange for unconditional transfers and new shared-cost programs (among others in the fields of post-secondary education and health) were reached. In the end, the increase in the number of shared-cost programs made the division of powers between the two orders of government less distinctive. By stipulating numerous and detailed conditions to federal grants, Ottawa was able to exercise some control over the nature and range of provincial activities. Hence, Canadian federalism was altered less by resorting to constitutional changes, which were always difficult to achieve, than by reaching agreements of a fiscal or administrative nature. With the exception of Quebec, provinces were responsible for the implementation of numerous social programs financed by shared-cost programs, leading the provinces to grow at a rate clearly superior to that of the central government. It was in 1957 that the federal government started an equalization program that sought to compensate provinces whose income per capita was inferior to the average, based on the revenue of representative provinces.

Moreover, in the 1990s, two federal initiatives further contributed to altering the federal-provincial relations. First, in its 1995 budget, the federal government unilaterally decided to change the way transfer payments were made to the provinces and territories. It changed the Canada Assistance Plan, which helped fund provincial social assistance and social service programs, and the Established Programs Financing, which helped fund health care and post-secondary education, and it created the Canada Health and Social Transfer. This new system of transferring money, while giving provinces more flexibility in the administration of social programs, reduced substantially the amounts allocated to provinces. The end goal of reducing federal debt led the federal government to cut transfer payments to the provinces by 21%. Hence, although provinces appeared

to have increased leeway and flexibility in the administration of programs, the reality was that the reduced transfer payments cornered the provinces into taking responsibility for choosing which programs to cut.

Federal funding for provinces and territories takes the form of four transfer programs: the Canada Health Transfer (CHT), the Canada Social Transfer (CST), the Equalization, and Territorial Formula Financing.[43] The first two types affect, as their names indicate, the funding of health care, post-secondary education, social assistance and social service policies (Perry 1997; Courchene 2007; Stevenson 2009). They are established through programs that have been negotiated between the federal government and the provinces in a setting where the former is generally able to impose conditions on the latter. These programs therefore have more or less binding conditions regarding the achievement of objectives, accountability, or the obligation to spend money in areas that do not always correspond to provincial priorities. Seen in this light, these programs reduce the autonomy of the provinces.

The Equalization program results in unconditional transfers. The federal government assesses the fiscal capacity of the provinces without regard to the programs or policies they put in place. In other words, the objective is to ensure that the provinces can offer comparable public services regardless of their wealth (Lecours and Béland 2010; Béland and Lecours 2010). Equalization is therefore intended to correct the horizontal gap in access to sources of income between provinces. As a result, Equalization is calculated based on fiscal capacity, not on the needs of the provinces. The latter can consequently spend the money obtained or even use it to reduce personal income tax. Equalization, unlike the CHT and the CST, increases the autonomy of the provinces.

As shown in Table 2, the Equalization program represents approximately half of the funding transferred by the federal government to Quebec. It is important to note that federal funding accounts for approximately 20% of the Quebec government's total revenues. In other words, Quebec's fiscal autonomy stems, for the most part, from its ability to collect revenues without having to rely on transfers from the central government. The latter exerts some influence on approximately 10% of provincial expenditures through the CHT and the CST.

[43] Territorial Formula Financing s an annual unconditional transfer payment from Canada's federal government to the three territorial governments of Yukon, the Northwest Territories, and Nunavut. It enables territorial governments to provide a range of public programs and services to their residents that are comparable to those offered by provincial governments, at comparable levels of taxation.

Table 2. Federal Support to Quebec (2010–2011 to 2019–2020)

(millions of dollars)

	2010-11	2011-12	2012-13	2033-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Canada Health Transfer (CST)	6,124	6,445	6,836	7,244	7,420	7,841	8,279	8,437	8,738	9,117
Canada Social Transfer (CST)	2,590	2,664	2,759	2,834	2,908	2,986	3,064	3,122	3,207	3,294
Equalization	8,552	7,815	7,391	7,833	9,286	9,521	10,030	11,081	11,732	13,124
Total Transfer Protection[44]		369	362							
Total—Federal Support	17,267	17,292	17,349	17,911	19,614	20,348	21,372	22,640	23,677	25,536
Per Capita Allocation (dollars)	2,180	2,162	2,148	2,199	2,391	2,467	2,571	2,732	2,825	3,013

Source: Department of Finance Canada (2017)

8. Intergovernmental Relations

Intergovernmental discussions take place mainly when these powers are not specified, or their boundaries are contested (Cameron 2001, 131). We should mention that in the Canadian federation, the permeability of powers means that the various levels of government must act jointly in almost all areas of public policy (except foreign policy or defence issues). This phenomenon is reinforced by the fact that the Supreme Court of Canada now tends to interpret the division of powers more broadly, in the name of efficiency and effectiveness, and simply looks at which level of government has the greatest capacity to act in the sector under dispute. The principle of effectiveness justifies the federal government's active involvement in fields traditionally considered to be under exclusive provincial jurisdiction (Brouillet 2005, 320; Leclair 2005, 385). In Canada, as in other federations, the principle of interdependence refers to the means by which the provincial or territorial governments cooperate with each other or with the federal government. In contrast to Germany, intergovernmental forums do not allow federated entities to take part in decision-making at the federal level. Cameron (2001) highlights that the way in which regional interests are expressed at the national level (intrastate federalism) depends on the way their

[44] Total Transfer Protection was provided in 2011-12 and in 2012-13 to ensure that Quebec's total major transfers in one of these years are no lower than in the prior year. For the purpose of calculating Total Transfer Protection, total major transfers comprise Equalization, Canada Health Transfer, Canada Social Transfer and prior year Total Transfer Protection. For details, see https://www.fin.gc.ca/fedprov/mtp-eng.asp#notes (accessed on 20 June 2019)

representatives are chosen, i.e., by direct suffrage (like in Australia and the United States), direct election of delegates by regional governments (in Germany), or through a combination of these methods (in Belgium). The Canadian system of appointing senators has meant that the Senate's original mission of representing regional interests has not been fulfilled because its members are appointed by the executive branch of the federal government (Cameron 2001, 135). Since the Senate only partially fulfils its role as a second chamber and the Constitution does not recognize a specific framework or process for ensuring cooperation between the two levels of government, "more than any other federation, Canada relies on intergovernmental negotiation to help resolve political differences" (Jenkin 1983, 101). The Canadian federal system has thus had to develop parallel mechanisms governing intergovernmental relations on an ad hoc basis (Knopff and Sayers 2005, 123; Bakvis and Skogstad 2008, 5). The weaknesses of interstate federalism have gradually reduced it to relations between the executive branches of the two levels of government, particularly since the Second World War (McRoberts 1985; Smiley 1987, 97; Watts 2008, 122; Pelletier 2005, 3).

According to the Privy Council Office,[45] in Canada "[t]he instruments/mechanisms of intergovernmental relations are informal. They are not part of the Constitution and thus have no constitutional status. Nor do they have any basis in law or statute. They have developed on an ad hoc basis, in response to the requirements of the time" (Government of Canada 2017). Intergovernmental relations mainly allow for "the exchange of information, for bargaining, negotiation, and consensus building" (*Ibid.*). Governments have access to various forums for developing common strategies, coordinating activities between ministries, conveying ideas for the purposes of negotiation and persuasion, and even establishing bilateral and multilateral agreements (*Ibid.*). Forums for vertical intergovernmental relations include first ministers' meetings (federal, provincial, and territorial), ministerial meetings (by portfolio, such as health, the environment, agriculture, education, and so forth), and meetings attended by senior civil servants. Horizontal relations include interprovincial meetings that do not involve the federal government such as the Council of the Federation (Bakvis and Skogstad 2008, 9).[46]

[45] The Privy Council Office provides support and secretarial functions to the Canadian prime minister and government. For details, see https://www.canada.ca/en/privy-council.html (accessed on 20 June 2019).
[46] The Council of the Federation brings together the premiers of the 10 provinces and three territories. It a mechanism for cooperation between the provincial and territorial executive branches (Pelletier 2005, 4).

It was in the mid-1960s that the constitutional agenda became a stumbling block between Ottawa and the provinces. The opening of this dossier resulted from pressures from the Quebec government, which wanted to revise the division of powers in order to increase its margin of manoeuvrability in economic, social and cultural affairs. The federal government took advantage of this to put forth its own political agenda, notably the repatriation of the Constitution, the adoption of a constitutional amending formula and a Charter of Rights and Freedoms, and a strengthening of its ability to intervene in the economy. The division of powers was way down on Ottawa's list of priorities, reflecting a deepening of the conflict traditionally opposing the federal capital and the Quebec. The height of this conflict was the 1980 Quebec referendum. It asked the population for a mandate to negotiate a new constitutional arrangement based on the principle of associated states. This popular consultation was won by the supporters of Canadian federalism, although an analysis demonstrates that the citizens clearly favoured a decentralized form of federalism. Repatriation and constitutional changes two years later were a diversion from the 1980 referendum results; only Quebec firmly opposed the federal initiative (Rocher 1992a). Far from having responded to Quebec's expectations, the constitutional changes and the new Canadian Charter of Rights and Freedoms reaffirmed the federal government's desire to increase its ability to act in areas of provincial jurisdiction and to modify the original Constitution despite lacking the agreement of Quebec. This unilateralism was not without repercussions in that it marked the end of the conception of the Canadian state based on the view that it was the result of a pact between the two founding peoples. This centralizing tendency continued with the federal government's constitutional proposals of 1987 and 1992, though they were never ratified (Rocher and Boismenu 1990; Rocher 1992b; Rocher and Gagnon 1992). The failure of proposals aiming to amend the Constitution to make it acceptable for all provinces demonstrates the great difficulty of finding or creating a national consensus on the nature of Canadian federalism.

The referendum of 1995 on the issue of Quebec sovereignty almost led to the demise of Canada. 49.4% of Quebeckers answered favourably to the following question: "Do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership (…)?" The narrow defeat of the sovereignist option forced the federal government to review its national unity strategy. The federal government opted to bring forth a reference case to the Supreme Court, thereby judicializing the political conflict. The federal government asked the Supreme Court whether a unilateral declaration of independence by Quebec,

as proposed by sovereignists in the case of failed negotiations on renewed partnership, would be legal. At the end of August 1998, the Supreme Court answered negatively, yet qualifying its answer by adding that if the population of Quebec indicated clearly that it no longer wanted to be part of Canada, Canada was constitutionally obligated to negotiate in good faith the terms of secession.[47] The rift was made wider between Quebec and the rest of Canada when the federal government made it clear in November 1999 that it would not negotiate the terms of secession if it judged that the question asked in a referendum was not clear, or if the sovereignists only won by an absolute majority of the votes. In doing so, the federal government introduced the principle of a qualified majority, fearing that the rules accepted for the 1980 and 1995 referendums would not play in its favour next time around. This new federal legislation makes it impossible, in practical terms, for Quebec to accede to independence while conforming to the Canadian Constitution, which imposes an amending formula[48] that is so rigid that all negotiations towards secession are most likely to end unsuccessfully.

These initiatives undertaken by the federal government have further contributed to crystallize the conflict with Quebec. As a result of the federal government's refusal to negotiate with Quebec in case of secession, the First Nations' demands to create a third order of government, and the demands voiced by western Canadians to change the role of the Canadian Senate, Canada is now trapped in a constitutional status quo. For some, this confirms that Quebec is not free within the Canadian federation. That is to say that a member of the federation who wishes to be perceived as a nation can only succeed in doing so through discussion, negotiations, and amendments that are not blocked by arbitrary constraints (Tully 1999, 30). The fact that the constitutional changes of 1982 were imposed upon Quebec without its consent, that the amending formula was modified to the point that it prevents the recognition of Quebec as a nation, and that, finally, secession should have been addressed within the frame of the amending formula, brings Tully to conclude that Canada will remain a state in which liberty, justice and stability will always be partially absent, contributing to the people of Quebec's increasing identification with their own society without developing equivalent bonds of belonging to Canada.

[47] Supreme Court of Canada, *Reference re Secession of Quebec*, [1998] 2 SCR 217.
[48] The complex constitutional amending formula is regulated in sections 38 - 49 of the Constitution Act of 1982.

In 2001, the Quebec Liberal Party advocated the creation of the Council of the Federation (CF), one of whose main roles would be to permit greater cooperation between governments with regard to economic union and the strengthening of the Agreement on Internal Trade signed in 1994. As originally proposed, the CF was also supposed to examine standards and objectives with respect to Canada's social union, interpret the principles of the Canada Health Act, develop pan-Canadian objectives within provincial jurisdictions, limit federal spending powers, and prepare international agreements affecting provincial and federal jurisdictions (Parti libéral du Québec 2001, 16). The CF was officially created in December 2003 with the intention of restoring to the provinces and territories the influence and strength needed to become true partners in the Canada of tomorrow (Gouvernement du Québec 2004, 14). For its founders, it represented a forum for dialogue and idea sharing that could eventually lead to formal cooperation agreements. The CF is seen as an instrument for facilitating intergovernmental cooperation and developing a common vision of major issues faced by the provinces and territories, particularly in health, education, fiscal imbalance, the environment, energy, transportation, internal trade, and international representation. Made up of the provincial and territorial premiers, the CF must hold at least two meetings a year. Apart from a permanent secretariat, the 2003 agreement also set up two bodies: the Premiers' Council on Canadian Health Awareness and the Secretariat for Information and Cooperation on Fiscal Imbalance. The CF's record in the first few years was mixed. On the one hand, it is recognized for its commitment to transparency in that its follow-up and progress reports on various issues (internal trade and health, for example) are made public. On the other hand, the CF forms part of executive federalism, with very little or no involvement from the legislative branch, thus contributing to the democratic deficit that characterizes intergovernmental relations in Canada (Pelletier 2008, 219 − 221).

Horizontal bilateral interprovincial relations have grown in recent years. Numerous agreements have been signed between two or more provinces. For example, Ontario and Quebec signed a general protocol in 2006.[49] This initiative gave rise to specific agreements on labour mobility, procurement, interprovincial trade, and Francophone affairs. British Columbia and Alberta also

[49] The Ontario – Quebec Protocol is available online at http://www.ontla.on.ca/library/repository/mon/14000/263297.pdf (accessed on 20 June 2019).

signed the Trade, Investment and Labour Mobility Agreement in 2006.[50] Other provinces strengthened their bilateral or multilateral relations in their respective economic zones.

In short, since the division of powers dating back 150 years has never been revised, and the various levels of government encroach on each other, the opportunities for conflict have multiplied, leading to the need for forums where governments can negotiate. These forums are concentrated within the executive branch. The expansion of intergovernmental relations has diminished parliamentary and judicial control and undermines the transparency of the executive powers (Cameron and Simeon 2002, 66; Poirier 2009, 120).

9. Inter-group Relations within the Autonomous Province

In the 1960s, French-speaking Quebeckers sought to transform the economic and political environment that had contributed to their status of socio-economic subordination. This was understandable considering that at that time the Quebec economy was dominated by Anglo-Canadian interests, French Canadians had an income 35% lower than that of Anglophones and unilingual Anglophones earned higher incomes than bilingual francophones. Some spoke of internal colonialism based on a cultural (and ethnic) division of labour (McRoberts 1979).

This transformation was characterized by a double phenomenon. First, there has been a territorial refocusing of Francophone representations based on Quebec's political boundaries. While French Canada represented the traditional territorial base where Francophones could only constitute a minority, the accelerated development of the Quebec province provided them with a political space that they could control more easily. This change required an in-depth reflection on how the "others" (the Anglophone minority in Quebec and individuals belonging to different ethnic minorities) could be incorporated into the political project to redefine the relationship between Quebec and the rest of Canada. Francophones in Quebec were led to remove their only ethnic references and reformulate their project in a more inclusive way by insisting on the more "neutral" dimensions that are the language, the culture and the values associated with liberal democracy.

[50] The British Columbia – Alberta agreement is available online at http://www.tilma.ca/the_agreement.asp (accessed on 20 June 2019).

The strong Anglophone presence in Montreal has resulted in the establishment of a large network of public and private institutions. Across Quebec, there are nine English-language school boards, more than 350 public schools and about 50 private schools (the vast majority of which are publicly funded). In terms of graduate studies, Quebec has three universities with English as the primary language of instruction.[51] Access to health and social services is guaranteed for any English-speaking person, provided that the institutions have the necessary human, material and financial resources. In the Montreal area, all hospitals offer services in English and some of them are affiliated with McGill University Health Centre. The cultural life of Anglophones is fuelled by a large institutional network, including theatres, cinemas, libraries, radio and television. In addition, there are two English-language dailies[52] and more than a dozen weekly newspapers.

English-speaking Quebeckers do not share the cultural and political aspirations of the French-speaking majority. They now accept the fact that French is predominant, but on condition that it does not reduce their language rights or the presence of this language in the public space. Nonetheless, the presence of English should also not be too constraining in the workplace. For example, a survey shows that about two thirds of Anglophones support the idea that large Montreal corporations are allowed to hire unilingual Anglophones as managers, even if this means that French-speaking employees need to work in English (CROP 2012). This rejection is even more pronounced among young people. Young Anglophones who identify less with Quebec are very attached to the city where they live, in particular Montreal, which they consider to be diverse and tolerant. They developed a sense of belonging to the Anglophone and Francophone groups while at the same time being committed to the development and maintenance of the English-speaking communities to which their first allegiance goes (Gérin-Lajoie, 2011, Magnan and Lamarre, 2013). As summarized by Richard Bourhis (2008, 151):

> Francophones identify very strongly as Québécois and Francophone and strongly as sovereignist; but moderately as Canadian and only a little as federalist. Anglophones identify very strongly as Canadian, Anglophone and federalist, moderately as Québécois and not at all as sovereignist. Anglophone immigrants identify moderately strongly as Canadian, Anglophone, immigrant and federalist but very little as Québécois, Francophone and

[51] McGill University and Concordia University in Montreal and Bishop's University in Sherbrooke.
[52] *The Gazette* in Montreal and *The Record* in Sherbrooke.

> sovereignist. Francophone immigrants identify moderately strongly as Canadian, Francophone, immigrant and federalist. However, Francophone immigrants though attending French colleges identify little as Québécois and Anglophone and very little as sovereignist. Thus, Quebec Anglophones as well as immigrants of Anglophone and Francophone background share in common their identification as Canadian and federalist and their rejection of sovereignty.

Francophones consider English-speaking Quebeckers to be a historic minority. However, English-speaking Quebeckers have had difficulty accepting this status and they are worried about the vitality of their communities, which are experiencing a constant demographic decline. At the socio-economic level, the English-speaking elites of Quebec conceived of themselves as an extension of the English-speaking majority of Canada until the 1970s. The English speakers saw a minority status imposed on them by a Francophone population that had developed attitudes specific to majority groups. English-speaking communities have adopted reflexes associated with minority groups, namely to defend their "gains", ensure the sustainability of their communities (including claiming that children of immigrants can attend English school) and maintain control of their institutions. Linguistic laws could only appear as reducing their freedom of choice, and, in so doing, were portrayed as coercive and vexatious. They accept the status of an official language minority community, as defined by the government of Canada,[53] to the extent that this status values official bilingualism. Yet, they are rather refractory to the status of French as an official, common and national language. The predominance of French in Quebec is undisputed, but it should rather be deployed in a bilingual environment since English, it is argued, is part of the common heritage of Quebeckers.

Although French Canada has experienced several waves of migration throughout its history, awareness of the need to ensure the integration of people with an immigrant background only began to emerge in the 1960s, thanks to the work done by the Royal Commission of Inquiry on Education in the Province of Quebec (1961–1966). The commissioners had found that the vast majority of immigrant children were enrolled in the Anglo-Protestant school system. This reality quickly changed when the government made French the official language of Quebec. Since 1977,

[53] An official-language minority is either a French-speaker or French-speaking population living outside of Quebec, where English is predominant, or an English-speaker or English-speaking population living in Quebec, where French is predominant.

children of immigrant origin must enrol in primary and secondary schools of the French school system to facilitate learning the common language.

Beginning in the early 1980s, the Quebec government tabled several action plans and discussion and orientation documents to clarify its approach known as "managing ethnocultural diversity".[54] The concerns put forward revolve around principles that are repeatedly reiterated: cultural rapprochement through dialogue, harmonization, exchanges and reciprocity, the ability of communities to conserve and develop their culture of origin. This new orientation was somehow halfway between the assimilationist approach and Canadian multiculturalism.

In 1990, the government introduced the concept of "moral contract" to define the principles that are supposed to challenge the whole of Quebec society. This contract has three main aspects: French as a common language of public life, a participatory democratic society and a pluralistic society within the limits imposed by a respect for fundamental democratic values and the need for intercommunity exchange. In sum, even if the notions of collective heritage and sense of belonging are constantly recalled, the statements emphasize civic identity as a determining element of integration policy.

10. Membership, "Quasi-citizenship" and Special Rights

Formally, residents of Quebec do not have "special rights" just because they belong to a distinct "national" political community. They are subject to the same laws as all Canadians. The Quebec government may adopt legislation in its areas of jurisdiction that apply only to its "citizens" as is the case for all provincial governments. In short, Canadian citizens living in Quebec do not have access to any special rights.

That being said, the Canadian courts, and more specifically the Supreme Court of Canada, have confirmed that Quebec is a distinct society in Canada and that this feature was entrenched in the

[54] See, for example, Ministère de l'Immigration et des Communautés culturelles (1981); Ministère de l'Immigration et des Communautés culturelles (1990); Ministère des Relations avec les citoyens et de l'Immigration (2004); Ministère de l'Immigration, de la Diversité et de l'Inclusion (2016). This department has changed its name regularly since its creation in 1968. Currently, it is known as "Ministry of Immigration, Diversity and Inclusion" (*Ministère de l'Immigration, de la Diversité et de l'Inclusion*). For details, see https://www.immigration-quebec.gouv.qc.ca/en/home.html (accessed on 20 June 2019).

Constitution when Canada adopted a federal system. For example, in the 1998 *Reference re Secession of Quebec*, the Supreme Court held that:

> The principle of federalism facilitates the pursuit of collective goals by cultural and linguistic minorities which form the majority within a particular province. This is the case in Quebec, where the majority of the population is French-speaking, and which possesses a distinct culture. This is not merely the result of chance. The social and demographic reality of Quebec explains the existence of the Province of Quebec as a political unit and indeed was one of the essential reasons for establishing a federal structure for the Canadian union in 1867.[55]

In the same vein, in another reference concerning the Supreme Court Act itself, the tribunal had to rule on the appointment of a judge to this Court for the Province of Quebec. The Act specifies that at least three of the nine judges to be chosen from among the judges of the Court of Appeal or the Superior Court of the province. The federal government had appointed a person who was no longer registered as a lawyer with the Quebec Bar, although he was a federal court judge. One of the reasons given to deny this appointment was that one of the purposes of the Supreme Court Act "is not only to ensure civil law training and experience on the Court, but also to ensure that Quebec's distinct legal traditions and social values are represented on the Court, thereby enhancing the confidence of the people of Quebec in the Supreme Court as the final arbiter of their rights."[56] In short, the interpretation of Canadian law by the courts takes into account, when necessary, the specific institutional and cultural peculiarities of Quebec.

This last aspect does not confer special rights on Quebeckers. It only makes sure that the legal environment is sensitive to the needs of this society with a distinct culture, particularly because of its language. In this respect, it is the institutions that get some protection. Individuals, in turn, remain consistently protected by the law that applies to all Canadian citizens.

[55] Supreme Court of Canada, *Reference re Secession of Quebec*, [1998] 2 SCR 217, para. 59.
[56] Supreme Court of Canada, *Reference re Supreme Court Act*, ss. 5 and 6, [2014] SCC 21, [2014] 1 SCR 433, para. 49.

11. General Assessment and Outlook

The fact that Canada adopted a federal form is explained, among other things, by the need to set up political institutions reflecting the diversity of national communities present in the territory. The federal system made it possible to go over the problem of dualism that had marked the legislative union of 1840. Indeed, this union, made up of Canada West (now Ontario) and Canada East (now Quebec), was marked by a bi-majoritarian and bi-national government that allowed the maintenance and reproduction of elites. Each community could thus veto the decisions desired by the other party.

While the influence of Quebec's representatives in federal institutions has steadily declined, the establishment of the province has allowed the development of a legislative, administrative and political apparatus with extensive powers and a certain fiscal autonomy. Today, the flexibility of the provincial governments allows the provinces to be active in almost all areas that affect domestic policy. In addition, despite an imbalance in access to sources of revenue, provinces can count on significant independent revenues. Federal transfers represent only one fifth of the revenue of the Quebec government. Thus, the margin of autonomy of Quebec is important. This does not eliminate the conflicts that inevitably arise in any federation.

Finally, it must be emphasized that Quebec has seen its political and symbolic weight gradually decline in recent decades. Constitutional negotiations from the mid-1960s to the mid-1990s are no longer conceivable. They have fuelled significant conflicts between the federal government and the provinces, especially Quebec, about Canada's *raison d'être*.

The failures of the 1980 and 1995 referendums have transformed the balance of power between Quebec and the rest of Canada. On both occasions, the Quebec population rejected the sovereignty proposal. The two referendums were democratic and fed by lively public debates involving all political parties, provincial and federal. The results were accepted both by the general population and the main political players; however, despite two defeats the sovereignty movement has not given in. A significant portion of the Quebec population, despite a now declining minority (from 30% to 45% of the population depending on the political circumstances), still embraces the sovereignty option and two major separatist parties (i.e. *Parti Québécois* and *Québec Solidaire*) still promote it.

The Quebec referendum experience is a rich case study from which many lessons can be drawn. Firstly, the referendums were held within a framework of legal and political standards accepted by all stakeholders. This condition was essential to the recognition of the referendum's legitimacy and to the acceptance of its outcome. Secondly, the social and political actors adopted strategies and arguments that left little room for compromise. Nevertheless, the promises made and their fulfilment (or lack thereof) helped fuel many Quebeckers' distrust of and displeasure with the Canadian government. Thirdly, the sovereignty proposal's double defeat did not result in things "returning to normal," in particular with respect to constitutional politics.

After each of the referendums, significant changes were made to the Canadian institutional setting. The 1980 referendum was followed by the repatriation and amendment of the Canadian Constitution, which significantly limited the Quebec government's authority over cultural identity, namely its language policy.[57] In addition, the Constitution Act of 1982 has shown no openness to recognizing Quebec as a distinct society. In fact, it is quite the opposite. The Constitution is based on strict equality of status and equal rights among provinces. The experience of the 1995 referendum led to a legislative (and judicial) regulation of the referendum process. The conditions under which the two previous consultations took place would no longer be accepted: the central government assumed the right to reject the question, to interpret a new referendum's results as one would like and to negotiate Quebec's possible territorial partition. The right to self-determination claimed by Quebec nationalists was not completely suppressed, but it is now limited by Canadian law and is based on the Supreme Court's interpretation, which has often been referred to in the international realm.

[57] For instance, section 23 of the Canadian Charter of Rights and Freedoms entrenched into the Constitution Act of 1982, dealing with the right to education in the language of the French or English minority in each province, is drafted in such a way as to invalidate an important section of the Charter of the French Language. In 1988, the Supreme Court of Canada concluded that the prohibition on the use of any language other than French in public signage and commercial advertising violates freedom of expression. However, the Court opened the door to the clear predominance of French. For details, see Supreme Court of Canada, *Valérie Ford v. Quebec (Attorney General)*, [1988] 2 SCR 712.

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List of abbreviation

CF - Council of the Federation

CFL - Charter of the French Language

CHT – Canada Health Transfer

CST - Canada Social Transfer

JCPC - Judicial Committee of the Privy Council

MNA - Member of the National Assembly