

NATIONAL ASSEMBLY

SECOND SESSION

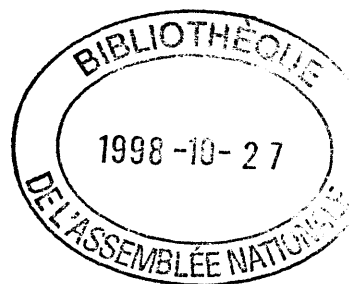
THIRTY-FIFTH LEGISLATURE

Bill 399

An Act respecting the Québec proposal for constitutional peace

Introduction

**Introduced by
Mr Mario Dumont
Member for Rivière-du-Loup**



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EXPLANATORY NOTES

The object of this bill is to require the Government to put forward a proposal for constitutional peace in pursuance of the constitutional principle set forth in paragraphs 69 and 88 of the Supreme Court of Canada opinion rendered on the Reference by the Governor in Council concerning certain questions relating to the secession of Québec from Canada.

The bill provides that a referendum on the sovereignty of Québec cannot be held before the end of the Thirty-Sixth Legislature. During that period, no consultation of the electors by way of a referendum under the Referendum Act may be ordered by the Government if the referendum concerns a question or bill pertaining to Québec sovereignty.

The Government, in keeping with the principles set forth in the bill, will be required to propose the implementation of in-depth reform of the political and constitutional framework governing Québec society. The proposal for constitutional peace must provide that Québec is to exercise full sovereignty in twenty-two fields of jurisdiction enumerated in the bill. The proposal must also define the fields of jurisdiction exclusive to Canada and those to be shared by Québec and Canada.

The bill also establishes that the objective of the proposal for constitutional peace is to strengthen the Canadian economic union in accordance with specified guidelines. In addition, the new Canadian constitution must set limits on the spending power of the Government of Canada in the fields of jurisdiction exclusive to Québec, provide for the elimination of overlapping jurisdictions and contain a new amendment formula.

Lastly, the bill provides that the Government of Québec is required to submit its proposal for constitutional peace to the Prime Minister of Canada and the first ministers of the other provinces not later than 90 days after the coming into force of the Act and request the convening of a conference composed of the Prime Minister of Canada and the first ministers of the provinces not later than 12 months after the coming into force of the Act.

Bill 399

AN ACT RESPECTING THE QUÉBEC PROPOSAL FOR CONSTITUTIONAL PEACE

PREAMBLE

WHEREAS Quebecers constitute a distinct society, free and capable of assuming its destiny and assuring its economic, social and cultural development;

WHEREAS Québec has already demonstrated its respect for democratic values and individual human rights and freedoms;

WHEREAS Québec has recognized that Quebecers wish to see the quality and influence of the French language assured and to make French the language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business;

WHEREAS Québec intends to pursue this objective in a spirit of fairness and open-mindedness, respectful of the rights and institutions of the English-speaking community of Québec;

WHEREAS Québec recognizes the right of Amerinds and the Inuit of Québec to preserve and develop their specific identity and culture and to assure the progress of their communities;

WHEREAS Québec considers the contribution of the cultural communities to be of prime importance for the development of Québec;

WHEREAS Québec supports French-speaking communities outside Québec and contributes to the international French-speaking world;

WHEREAS the economy of Québec is mature and vigorous and Quebecers clearly wish to see its development and growth assured, while respecting the demands of both market globalization and social justice;

WHEREAS the Constitution Act, 1982, was proclaimed despite the opposition of the National Assembly;

WHEREAS the 1987 Constitutional Accord, the aim of which was to allow Québec to become a party to the Constitution Act, 1982, has failed;

WHEREAS the 1992 Charlottetown Agreement was rejected by a majority of Quebecers who judged it to be insufficient, particularly as regards the powers attributed to the National Assembly;

WHEREAS sovereignty associated with a proposal for a treaty on an economic and political partnership was rejected by a majority of Quebecers in the 30 October 1995 referendum;

WHEREAS changes to the political and constitutional status of Québec are necessary in order to settle the dispute between Québec and Canada;

WHEREAS the opinion of the Supreme Court of Canada rendered on 20 August 1998 concerning certain questions relating to the secession of Québec opens new perspectives of settlement by conferring a right to initiate constitutional change on each participant in Confederation;

WHEREAS the existence of this right imposes a corresponding duty on the participants in Confederation to engage in constitutional discussions in order to acknowledge and address democratic expressions of a desire for change;

WHEREAS that being the case, it is expedient to initiate constitutional change by submitting a proposal for constitutional peace, and to do so in a climate conducive to good understanding;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

REFERENDUM MORATORIUM AND QUÉBEC PROPOSAL FOR CONSTITUTIONAL PEACE

1. No consultation of the electors by way of a referendum under the Referendum Act (R.S.Q., chapter C-64.1) may be ordered by the Government before the end of the Thirty-Sixth Legislature if the referendum concerns a question or bill pertaining to Québec sovereignty.

2. The Government, in pursuance of the constitutional principle recognized in paragraphs 69 and 88 of the Supreme Court opinion appearing in the Schedule as regards the Reference by the Governor in Council concerning certain questions relating to the secession of Québec from Canada, must put forward a proposal for constitutional peace.

3. The Government, in keeping with the principles set forth in this Act, is bound to propose the implementation of in-depth reform of the political and constitutional framework governing Québec society.

Agreements with the other members of the Confederation must be made with due consideration for the autonomy of the National Assembly, the strengthening of the Canadian economic union and the rearrangement of the political structures in Canada.

CHAPTER II

CONSTITUTIONAL REFORM

DIVISION I

EXCLUSIVE POWERS OF THE PARLIAMENT OF QUÉBEC

4. The Québec proposal for constitutional peace shall provide that Québec is to exercise full sovereignty in the matters over which it already has exclusive jurisdiction under the present Constitution, in particular:

- Municipal Affairs;
- Social Affairs;
- Culture;
- Education;
- Housing;
- Recreation and Sports;
- Family Policy;
- Labour Force Policy;
- Natural Resources;
- Health;
- Tourism.

5. The Québec proposal for constitutional peace shall provide that Québec is also to exercise full sovereignty in the matters not specifically enumerated in the present Constitution, namely residual powers, and in certain other matters currently under shared jurisdiction or under exclusive federal jurisdiction, in particular:

- Agriculture;
- Employment Insurance;
- Communications;
- Regional Development;
- Energy;
- Environment;
- Industry and Trade;
- Language;
- Research and Development;
- Civil Protection;
- Income Security.

DIVISION II

EXCLUSIVE POWERS OF THE PARLIAMENT OF CANADA

6. The Québec proposal for constitutional peace shall provide that certain powers are to be exercised exclusively by the Government of Canada, in particular as regards:

- Defence and Territorial Security;
- Customs and Tariffs;
- Management of the Common Debt;
- Currency;
- Equalization.

DIVISION III

POWERS SHARED BY THE PARLIAMENTS OF QUÉBEC AND CANADA

7. The Québec proposal for constitutional peace shall provide that certain powers are to be shared by the Parliaments of Québec or of the provinces and the Parliament of Canada, according to the respective jurisdictions of each level of government, in particular, as regards:

- Native Affairs;
- Taxation and Revenue;
- Immigration;
- Financial Institutions;
- Justice;
- Fisheries;
- Foreign Policy;
- Postal Service and Telecommunications;
- Transport.

CHAPTER III

OBJECTIVES OF THE CONSTITUTIONAL REFORM

DIVISION I

STRENGTHENING OF THE ECONOMIC UNION

8. The objective of the Québec proposal for constitutional peace shall be to strengthen the Canadian economic union in accordance with specific guidelines, namely

- (1) the free movement of goods, persons and capital; and
- (2) a customs and monetary union and the reestablishment of balanced public Canadian finances through a reduction in the size of the central State and the introduction of constitutional requirements entailing, in particular, the establishment of rules to limit deficits and delimit the taxation powers of the central State.

DIVISION II

NEW POLITICAL AND CONSTITUTIONAL ORDER

9. The new Canadian Constitution shall provide for the elimination of the spending power of the Government of Canada in matters under the exclusive jurisdiction of Québec.

10. The new Canadian Constitution shall provide for the elimination of overlapping jurisdictions.

11. The new Canadian Constitution shall contain a new amending formula providing that any constitutional amendment will require the approval of a substantial majority of provinces, including Québec, that represent in the aggregate at least fifty percent of the population of Canada.

DIVISION III

CENTRAL INSTITUTIONS

12. The Québec proposal for constitutional peace shall provide for the abolition of the Senate in its present form and the maintenance of a common parliament, elected by universal suffrage, with legislative powers limited to the matters described in Chapter II.

The proposal shall also provide for reform of the central Bank of Canada that will ensure the presence of the provinces according to regional representation and assure the Bank's independence from political powers.

13. In the event of a vacancy on the Supreme Court of Canada, the government of a province may propose to the federal Minister of Justice, to fill the vacancy, the names of persons who are members of the bar or judges of a court in the province.

At least one-third of the judges composing the Supreme Court shall be appointed from a list of persons who are members of the Québec Bar or judges of a court in Québec.

CHAPTER IV

NEGOTIATION OF THE QUÉBEC PROPOSAL FOR CONSTITUTIONAL PEACE

14. The Government is bound to submit the Québec proposal for constitutional peace to the Prime Minister of Canada and the first ministers of the other provinces not later than 90 days after the coming into force of this Act.

For the purposes of the negotiation of the Québec proposal for constitutional peace, the Government shall, not later than 12 months after the coming into force of this Act, request the convening of a conference composed of the Prime Minister of Canada and the first ministers of the provinces.

CHAPTER V

COMING INTO FORCE

15. This Act comes into force on (*insert here the date of assent to this Act*).

SCHEDULE

EXTRACTS FROM THE SUPREME COURT OPINION ON THE REFERENCE BY THE GOVERNOR IN COUNCIL CONCERNING CERTAIN QUESTIONS RELATING TO THE SECESSION OF QUÉBEC FROM CANADA (OTTAWA, 20 AUGUST 1998)

“69 The *Constitution Act, 1982* gives expression to this principle, by conferring a right to initiate constitutional change on each participant in Confederation. In our view, the existence of this right imposes a corresponding duty on the participants in Confederation to engage in constitutional discussions in order to acknowledge and address democratic expressions of a desire for change in other provinces. This duty is inherent in the democratic principle which is a fundamental predicate of our system of governance.”

“88 . . . In Canada, the initiative for constitutional amendment is the responsibility of democratically elected representatives of the participants in Confederation. Those representatives may, of course, take their cue from a referendum, but in legal terms, constitution-making in Canada, as in many countries, is undertaken by the democratically elected representatives of the people. The corollary of a legitimate attempt by one participant in Confederation to seek an amendment to the Constitution is an obligation on all parties to come to the negotiating table. . . .”