Distinct Society

The 1967 Commission on Bilingualism and Biculturalism described Canada as being constituted of "two great distinct cultures" — English and French — with a "distinct society" residing in Quebec and an "English-speaking society" in the Rest of Canada (*ROC*).[1] The phrase entered constitutional negotiations as early as 1970, but came to prominence when the recognition of Quebec as a distinct society was included as one of five conditions for Quebec's participation in constitutional talks in 1985. The 1987 Meech Lake Accord proposed a distinct society clause be included in the body of the constitution,[2] while the 1992 Charlottetown Accord proposed a similar clause in the constitution's *preamble*.[3] Both versions would have operated as *interpretive* clauses. Concerns were expressed that the clause would confer special status on Quebec and undermine the Canadian *Charter*'s equality rights.

As to the first concern, both proposals expressly provided that no additional powers were to be accorded to Quebec under the division of powers by virtue of the clause. Instead, courts would have been expected to use the distinct society clause as an aid to interpretation in constitutional disputes between the federal and provincial governments.[4]

The second concern, that a distinct society clause would undermine rights guaranteed under the *Charter,* was based on the fear that Quebec wished to limit *Charter* rights and freedoms without having to resort to the notwithstanding clause.[5] It was believed that a distinct society clause would have made courts hesitant to find language laws, and other laws designed to promote Quebec's distinctive language and culture, inconsistent with *Charter* freedoms. It should be understood, however, that the Supreme Court of Canada took into account Quebec's distinctiveness, without a distinct society clause, when it ruled in 1988 that Quebec's commercial sign law was contrary to the Quebec and Canadian *Charter* guarantees of freedom of expression.[6]

In 2006, the Conservative Government under Prime Minister Harper, passed a resolution in the House of Commons which recognized that "the Quebecois form a nation within a united Canada."[7] The resolution passed with overwhelming support, unlike a similarly worded resolution in 1995 (which was presented as a response to the close result in the Quebec Referendum). The 2006 resolution was not a constitutional amendment, or even a statute, and does not confer any special legal status on Quebec.[8]

[1] Canada, Royal Commission on Bilingualism and Biculturalism, *Report of the Royal Commission on Bilingualism and Biculturalism,* book 1 (Ottawa: Privy Council Office, 1967) at para 43.

[2] "The Meech Lake Accord" (2003) 30:1 Man LJ 39 at 39.

[3] "Charlottetown Accord: Document" (7 February 2006) at s 2(1)(c), online: *The Canadian Encyclopedia* <https://www.thecanadianencyclopedia.ca/en/article/charlottetown-accord-document>.

[4] Richard Simeon, “Meech Lake and Shifting Conceptions of Canadian Federalism” (1988) 14 (Supplement) Can Pub Pol’y S7 at S12, S21.

[5] Troy Q Riddell and FL Morton, “Reasonable Limitations, Distinct Society and the Canada Clause: Interpretive Clauses and the Competition for Constitutional Advantage” (1998) 31:3 Can J Political Science 467 at 485-86.

[6] See: *Ford v. Quebec (Attorney General),* [1988] 2 SCR 712, 1988 CanLII 19 (SCC).

[7] Peter W Hogg & Wade Wright, *Constitutional Law of Canada*, 5th ed (date accessed 1 January 2022), (Toronto: Thomson Reuters Canada), ch. 5, § 5:4. Thomson Reuters ProView.

[8] *Ibid*.