

**ABORIGINAL JUSTICE IMPLEMENTATION COMMISSION**

**THE 1985 QUÉBEC NATIONAL ASSEMBLY RESOLUTION  
ON ABORIGINAL RIGHTS : A BRIEF COMMENTARY**

**Submitted By:**

**Paul Joffe**

**May 29, 2000**

## **THE 1985 QUÉBEC NATIONAL ASSEMBLY RESOLUTION ON ABORIGINAL RIGHTS: A BRIEF COMMENTARY**

I have been requested by the Aboriginal Justice Implementation Commission to provide advice on the following:

1. A brief description of the process and my perception of the objectives of the Québec government in passing the 1985 Resolution.
2. A brief discussion of my perceptions of the objectives of the First Nations.
3. A brief discussion outlining procedural and any other difficulties encountered.
4. A brief discussion on why Manitoba should consider a recognition statement, (without necessarily addressing the method) and what lessons I believe may be taken from the Québec experience, (dos and don'ts for Manitoba).

### **1. Brief description of process and perceived objectives of Québec government in passing the 1985 Resolution**

**Description of process.** On March 20, 1985, the National Assembly of Québec adopted a Resolution entitled *Motion for the recognition of aboriginal rights in Québec*. However, the initial process that led up to the adoption of the 1985 Resolution did not contemplate any such objective.

In the early 1980s, the “Aboriginal Peoples of Québec Task Force on the Constitution” was established by Aboriginal peoples in Québec to prepare common Aboriginal positions for constitutional discussions at the national level. This Task Force was comprised of the representative entities of virtually all Aboriginal peoples in Québec (Inuit, Indian, Metis or Non-Status), including the Québec Native Women’s Association.

A key purpose of the Task Force was also to seek Québec’s support for the constitutional positions that the Task Force members were planning to put forward at the upcoming First Ministers’ Conference in March 1983. On November 30, 1982, a letter was sent by the Task Force to then Québec Premier René Lévesque. The November 30 letter appended 15 points or principles that reflected the constitutional position of the Task Force and its members.

On February 10, 1983, Premier Lévesque met with representatives of the Task Force, at which time he submitted to them his letter of response. The Premier’s February 10 letter included an

appendix with specific responses by the government of Québec to each of the 15 points which had been raised by the Task Force in its November 30 letter. This exchange of letters led to a number of meetings between representatives of the Québec government and the Task Force in the months that followed. Further, in a letter, dated November 1, 1983, the Task Force formally responded in detail to Québec's answers to the 15 points originally formulated by the Task Force.

At some point in 1984, the Québec government suddenly declared to the Task Force that it was planning to draft a Resolution on the Aboriginal rights of Aboriginal peoples in Québec. The draft Resolution was to be tabled in the National Assembly for possible adoption. The Parti Québécois government reassured Task Force members that any such Resolution would be the product of discussion and negotiation with them.

The government repeatedly expressed that: i) it would be beneficial to Aboriginal peoples to engage in a process of discussion and negotiation with the Québec government; ii) it did not believe that any concrete results would emerge from the First Ministers' Conferences on Aboriginal Constitutional Matters at the national level; and iii) such a Québec process might lead not only to a possible National Assembly Resolution on Aboriginal Rights, but also to substantive agreements with the Québec government.

Thus, in 1983 and 1984, a series of *ad hoc* meetings took place between representatives of the Québec government and the Task Force. This included a few meetings with Premier Lévesque. Initially, the discussions focussed on the constitutional positions of the Task Force members. As described above, the discussions and negotiations were later based on a draft text for a possible Resolution to be adopted by the National Assembly. The draft text was initially prepared by the Québec government and went through some modification as negotiations with the Task Force ensued.

While negotiations were still continuing, on December 18, 1984, Premier Lévesque suddenly and without notice tabled a Resolution in the National Assembly. The Resolution that was tabled differed from the latest draft that had been under discussion with the Task Force. The Parti Québécois government unilaterally altered any paragraphs or wordings that it did not favour. These government actions were viewed by Task Force members as a violation of the negotiation process. Premier Lévesque had given his commitment to the Task Force that no Resolution would be tabled in the National Assembly without the approval of the members of the Task Force.

On March 20, 1985, despite vigorous objections by Task Force members, the National Assembly passed the *Motion for the recognition of aboriginal rights in Québec*. Every Liberal Member of the National Assembly (MNA) that was present voted against the adoption of the Resolution. In the debate preceding the vote, the Liberal MNAs declared that the Resolution included little or no substance for Aboriginal peoples in Québec. They also emphasized that Aboriginal peoples in Québec were clearly against the adoption of the Resolution, as drafted.

**Perceived objectives of Québec government.** In the 1985 Resolution, it is suggested that a primary objective was to establish a process with Aboriginal peoples to better identify and define their rights. However, in unilaterally tabling the 1985 Resolution in the National Assembly, the Québec government clearly had a number of ulterior objectives. In my view, these latter objectives included the following:

- i) The Québec government wanted some kind of “showpiece” to indicate to the Canadian public and the international community how well Québec treats Aboriginal peoples in the province. Even prior to its adoption, the Resolution was tabled by Québec government at a Federal-Provincial Meeting of Ministers on Aboriginal Constitutional Matters, in Ottawa, on December 18, 1984.

The Resolution was perceived to be especially important in the context of Québec secession. Over the years, the 1985 Resolution has been used by the government to demonstrate to the international community how the Québec government respects the Aboriginal rights of Aboriginal peoples in the province. Yet, in *R. v. Côté*, [1996] 4 C.N.L.R. 26 (S.C.C.), the government argued before the Supreme Court of Canada that no Aboriginal peoples had any Aboriginal rights anywhere in the province for the past 450 years.

- ii) Consistent with its sovereignty ambitions, the government wished to establish a “Québec only” process with Aboriginal peoples. The government was concerned that Aboriginal peoples in Québec were too interested in national constitutional reforms. Since 1982, when the *Constitution Act, 1982* had been adopted without the express approval of the National Assembly, the Québec government had been boycotting First Ministers’ Conferences as a symbol of its ongoing protest.
- iii) Following the adoption of the 1985 Resolution, the Québec government has repeatedly and publicly declared that it is the sole government in Canada who recognizes Aboriginal peoples as distinct “nations”. However, the main purpose of referring to Aboriginal peoples as “nations” has been to deny Aboriginal peoples their status as “peoples”, so as to deny them the right to self-determination. In this way, Québec hopes that it can prevent any division of territory within the province, should Québec seek to secede. No Aboriginal peoples in Québec are to be permitted to choose to remain with their traditional territories in Canada.

This strategy is currently evident in Québec’s Bill 99 (Reprint) entitled *An Act respecting the exercise of the fundamental rights and prerogatives of*

*the Québec people and the Québec State.* Bill 99 includes “Aboriginal nations” as part of a single “Québec people” encompassing everyone in the province. Although Aboriginal peoples have vigorously protested against being stripped of their human rights to self-identification and self-determination, the government shows no signs of altering its position in this regard.

## **2. Perceived objectives of Aboriginal peoples**

In engaging the Québec government in discussions, the Aboriginal peoples in Québec had one overriding objective. As already described, this was to persuade the Québec government to support their positions for the upcoming First Ministers’ Conference on Aboriginal Constitutional Matters in March 1983. While the Québec government refused to actively participate in First Ministers’ Conferences, Aboriginal peoples wished to ensure that Québec would not seek to “opt out” in regard to any future constitutional amendments concerning their rights that might emanate from national constitutional talks.

In 1984, when Québec proposed the possible adoption of a National Assembly Resolution on Aboriginal rights, Task Force members cautiously agreed to negotiate an appropriate text. In my view, the objective of Aboriginal peoples was to steer Québec towards a framework of principles that would recognize and respect their basic rights. At the same time, the Task Force members made it very clear that any provincial process of discussion or negotiation would not be a replacement for essential constitutional reforms at the national level.

## **3. Procedural and other difficulties**

As the above discussion might suggest, there were and continue to be a number of reasons why the 1985 Resolution has not been a success. Many of the reasons go well beyond any procedural questions and are a matter of blatant government self-interest and a lack of good faith.

The types of difficulties that were encountered include the following:

- i) **Unclear objectives.** The objectives of the Québec government and the Aboriginal Peoples Task Force on the Constitution were not adequately set out in writing. A common set of objectives that were mutually agreed upon might have helped to avoid misunderstandings and keep the process on course.

- ii) **Unilateral actions.** Unilateral actions by the Québec government clearly bred profound mistrust among Task Force members. This mistrust was compounded by the fact that Premier Lévesque had made a commitment not to table any Resolution in the National Assembly without the approval of the Aboriginal peoples concerned.
- iii) **Ad hoc discussion/negotiation process.** In regard to the negotiation of the contents and wording of the 1985 Resolution, meetings between the Québec government and the Task Force were not clearly established. The *ad hoc* approach to ongoing discussions appeared to diminish any sense of genuine government commitment to the negotiation process as a whole.
- iv) **Duty to negotiate not respected.** The principle of negotiating in good faith with Aboriginal peoples was not taken seriously by the Québec government. Otherwise, the government would not have unilaterally tabled the Resolution on Aboriginal rights in the National Assembly, despite a prior commitment not to do so.

#### 4. Why Manitoba should consider a recognition statement

For the purposes of this opinion, it is presumed that a “recognition” statement would in some way address the fundamental rights of Aboriginal peoples in Manitoba. It is also presumed that such a statement would seek to improve the government’s relationship with Aboriginal peoples, as well as foster cooperation, harmony and mutual trust in the future.

Reasons for considering a recognition statement would include the following:

- i) **Relationships must be improved.** In virtually every province in Canada, there exists an urgent need to improve relationships between non-Aboriginal governments and Aboriginal peoples. Such improvements can be initiated with a statement of basic principles that has the full support of the provincial government and the Aboriginal peoples concerned.
- ii) **Need to end marginalization and exclusion.** Throughout Canada’s history, federal and provincial government policies and actions have often had the effect of marginalizing, if not excluding, Aboriginal peoples in regard to matters fundamentally affecting them. A recognition statement may be seen as a first step towards developing principles and policies of inclusion that fully respect the status and rights of the peoples concerned.

- iii) **Democracy and social justice demands government action.** In the *Québec Secession Reference* (para. 64), the Supreme Court of Canada indicated that values inherent in the notion of democracy include a “commitment to social justice and equality”, as well as “respect for cultural and group identity”. In regard to Aboriginal Peoples, these are precisely the democratic values that are often disrespected by non-Aboriginal governments in Canada.

Since the principle of democracy has been highlighted by the Supreme Court as one of the underlying principles in Canada’s Constitution, efforts should be initiated to ensure that this principle is fully accessible to and enjoyed by Aboriginal peoples in Canada. As reflected in Canada’s Constitution, there exists a profound relationship between democracy, the rule of law and respect for human rights (including Aboriginal rights).

- iv) **A modest initiative.** In light of the serious and complex issues facing Aboriginal peoples, a recognition statement may be characterized as a relatively modest government initiative. While a recognition statement is not a solution to the crucial matters that need to be addressed, it can provide a beginning to building a bridge of common understanding and trust. It can also provide a foundation or springboard for further collaborative action by all parties involved.
- v) **Role and responsibility of provincial governments.** There continue to exist serious differences of opinion as to the nature and extent of the role and responsibilities of provincial governments in relation to Aboriginal peoples. Nevertheless, it cannot be denied that the policies, actions and laws of provincial governments can significantly affect Aboriginal peoples in their respective provinces. For example, the valid exercise of provincial jurisdiction can indirectly, if not directly, have serious impacts on the Aboriginal peoples concerned.

In a federal system such as Canada, each level of government has a role and responsibility in different situations to ensure recognition and respect for the status and fundamental rights of Aboriginal peoples. This obligation flows from the principles, values and rights under Canada’s Constitution, as confirmed in Supreme Court judgments. Moreover, key reports from such important sources as the Royal Commission on Aboriginal Peoples and the Manitoba Aboriginal Justice Inquiry also conclude that provincial governments, such as Manitoba, have a relevant role and responsibility

pertaining to Aboriginal peoples.

- vi) **Costs of inaction far greater.** It is difficult to quantify with any accuracy the costs of government inaction in regard to Aboriginal peoples. However, it cannot be denied that the costs of inaction are huge and continue to grow. These costs can be measured in terms of the ongoing prejudices suffered by Aboriginal peoples and the resulting adverse impacts on their societies, economies and individual citizens. The financial and social costs incurred by non-Aboriginal governments in perpetuating situations of dependency, dispossession and injustice are also highly significant. All of these aspects should not be ignored.

The successful formulation and acceptance of a recognition statement pose an essential challenge to the Manitoba government and Aboriginal peoples in the province. If agreement could not be reached on such a modest initiative, how would other, more complex issues be resolved?

The government of Manitoba should only consider engaging in a process of formulating a recognition statement, if it is genuinely committed to the objectives that such a statement might entail. In drafting a recognition statement, it is recommended that consideration be given to the following:

- i) A recognition statement should recognize, and be consistent with, existing and emerging human rights norms in Canada and internationally pertaining to Aboriginal peoples.
- ii) In particular, the status of Aboriginal peoples, as distinct peoples and constitutional entities, should be acknowledged. In the past, failure to appropriately recognize the status of Aboriginal peoples has generally led to serious misstatements and misunderstandings concerning Aboriginal peoples' fundamental rights.
- iii) A recognition statement should have the full support of the Aboriginal peoples concerned. In this regard, no unilateral action should be taken by the government of Manitoba.

[For a description of the nature and extent of unilateral actions taken by the Québec government against Aboriginal peoples, see P. Joffe, *Assessing the Delgamuukw Principles: National Implications and Potential Effects in*

*Québec*, (2000) 45 McGill L.J. 155, at pp. 188- 203.]

- iv) The recognition statement should identify clearly its key objectives, formulated in conjunction with the Aboriginal peoples affected.
- v) A recognition statement should set out a process for ongoing discussion and cooperation between the government of Manitoba and the Aboriginal peoples concerned.
- vi) No actions should be taken during the process to betray the trust and mutual respect that the recognition statement is intended to foster.
- vii) Financial resources should be provided by the Manitoba government to the Aboriginal peoples concerned, so as to ensure their full and effective participation in the formulation of a recognition statement and the ensuing process.
- viii) The purposes of the recognition statement should be accurately portrayed. Historical injustices should be acknowledged. Common intentions, both now and in the future, should be openly communicated to the public. False expectations or exaggerations should be avoided.
- ix) Overall, efforts should be taken to make the recognition statement a principled and concrete initiative. It should also be aspirational in nature. The statement should serve as a commitment to social justice, as well as a formal message of reconciliation, honour and fairness. Hopefully, this statement would be embraced by all peoples and citizens in Manitoba.

Respectfully submitted,

---

Paul Joffe