

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.*