

CONFIDENTIAL

May 28, 1975.

CONSTITUTIONAL GUARANTEES IN RELATION
TO "SECURITE CULTURELLE"

- A. Premier Bourassa, in his speech of April 20, 1975 said:

"Les Québécois ne sont pas opposés en principe au rapatriement de la Constitution au Canada. Cependant, comme nous avons une situation culturelle tout à fait particulière, surtout avec l'évolution dont je parlais tantôt, il est normal que nous exigions des garanties constitutionnelles pour la protection de notre culture."

- B. The present proposal is to "patriate" the constitution without, at this time, making any change in constitutional powers. The objective must, therefore, be to see what constitutional guarantees are possible through provisions that do not involve "powers".
- C. It is helpful to consider what kinds of action could constitute a threat to the cultural security of Quebec. Such actions would appear to be:
- (i) Constitutional change
 - to reduce provincial powers
 - to increase federal powers
 - (ii) Federal action under existing powers
 - action that may be ultra vires (an invasion of provincial jurisdiction)

- action that is intra vires (but which is injurious to the culture of Quebec).

All actions would have to come in one or another of the above categories.

D. "Guarantees" that are relevant to the categories of action:

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| <u>Constitutional change</u> | 1. <u>A diminution in provincial powers re culture -</u> |
| | - covered by Quebec "veto" in amending formula. |
| | 2. <u>An increase in or change of federal powers re culture -</u> |
| | - covered by Quebec "veto" in amending formula |

(No. 1 and No. 2 require a "negative guarantee" - a prohibition against constitutional change without assent of Quebec.)

3. Federal action under present powers which could be injurious to French culture.

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| <u>Unconstitutional action</u> | (a) <u>Action that is ultra vires</u> |
| | - protection must be the Supreme Court |
| | - Victoria Part IV would help guarantee a good and objective court for constitutional review. |
| <u>Constitutional action that is a cultural threat</u> | (b) <u>Action that is intra vires</u> |
| | - Possible protections - |
| | (i) An "intent" clause in the Proclamation |
| | (ii) Something re language rights. |