

cc: Mr. Carter  
Mr. Gravelle

CONFIDENTIAL

May 26th, 1975.

MEMORANDUM FOR MR. ROBERTSON

Re: Patriation and Bill of Rights Provisions

You asked some time ago for comments as to whether a proposal to incorporate the Bill of Rights provisions as they were agreed upon at Victoria into the Constitution (including the language provisions) might help meet Mr. Bourassa's position with respect to "guarantees".

Such a proposal might be worth exploring with Mr. Bourassa although, for reasons which follow, I think a modified version of that proposal might be more workable.

The only legal difficulty I would foresee for Bourassa in accepting the proposal the Prime Minister suggested is that the constitutional language guarantees which would thereby be incorporated into the Constitution would probably annul one and perhaps two sections of Bill 22.

Article 15 of the Victoria Charter provides:

An individual has the right to the use of the official language of his choice in communications between him and the head or central office of every department and agency of the Government of Canada and the governments of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island and Newfoundland.

Section 10 of Bill 22 provides:

The public administration must use the official language to communicate with the other governments of Canada and, within the province of Québec, with moral persons.

Every person may address the public administration in French or English, as he may choose.

Although an argument might be made that these two sections do not conflict, because the Victoria Charter talks about individuals while Bill 22 talks about governments and corporations, I think that the Victoria Charter provisions, being constitutional guarantees, would be given a very broad and generous interpretation by a court and be said to override section 10 of Bill 22.

The other possible conflict is that between Article 13 of the Victoria Charter and section 2 of Bill 22. Article 13 of the Charter provides that the statutes of the Province of Quebec shall be authoritative. Section 2 of Bill 22 provides that:

Where any discrepancy cannot be satisfactorily resolved by the ordinary rules of interpretation, the French text of the statutes of Québec prevails over the English text.

Here again there is a possibility that the Charter provisions would annul the provisions of Bill 22.

There would appear to be no other explicit conflict between Bill 22 and the Victoria Charter language guarantees. The question remains whether Bourassa would feel obligated to reject the Victoria Charter language guarantees because of the changed climate in Quebec since 1971, and because of his own policy of giving priority to the French language.

My feeling is that he would not see a conflict between his policy objectives for Quebec and agreeing to the Victoria Charter language guarantees. Apart from the sections mentioned above the Victoria Charter language guarantees do not put any additional obligations on Quebec; they merely restate the requirement Quebec is already required to observe by virtue of section 133 of the B.N.A. Act. The Charter in the main places additional constitutional obligations on other provinces and the federal government. Bourassa might therefore consider it somewhat of a coup to be able to have most of Bill 22 continue to operate in Quebec while at the same time having the Victoria Charter language guarantees constitutionally entrenched in other parts of the country.

*I think this is undoubtedly correct.*

The greatest obstacle to implementing the Prime Minister's suggestion would probably be obtaining the co-operation of the other provinces. Since the enacting of Bill 22 some provinces may not be as willing to co-operate as they were in 1971. They may not be willing to agree to implement the Charter language guarantees.

Some of the language provisions of the Charter have been incorporated into the law by provinces. New Brunswick, for example, has provided for the use of French in its legislature and in the courts. It has provided in its Official Language Act for the publication of statutes, journals and records of the legislature in French and for the provision of government services in both languages, although these sections have not yet been proclaimed in force. Ontario and P.E.I. have both provided that either French or English may be used in the legislative assemblies. Other language provisions of the Charter would however require the active co-operation of some provinces in order to be implemented. The sections of the Charter which I have in mind are Articles 11, 13, 14 and 15. (A copy of the political and language rights provisions of the Charter is attached.)

Since it might be unrealistic to expect provinces to undertake these obligations, an alternative approach might be to propose to Bourassa that some of the language guarantees agreed on at Victoria be constitutionally entrenched (i.e., only those within the control of the federal government to implement). Thus Articles 10, 12, 13 (except for the last phrase), 16, 17, 18 and 19 of the Charter could be included without a commitment from provinces. Modified versions of Articles 11, 14 and 15 could also be included. The modifications would be structured to ensure that those sections only impose obligations on the federal government while leaving the possibility that they could be agreed to and adopted by provinces if they wished.

*I am not at all sure that this would be acceptable to the P.M. At Victoria a major part of the objective was to get some of the English-language provinces committed.*

*Barbara*  
Barbara Reed

cc: Mr. Carter  
Mr. Gravelle

## APPENDIX B

### Canadian Constitutional Charter

Constitutional Conference, Victoria, June 14-16, 1971

#### PART I—POLITICAL RIGHTS

Art. 1. It is hereby recognized and declared that in Canada every person has the following fundamental freedoms:

freedom of thought, conscience and religion,  
freedom of opinion and expression, and  
freedom of peaceful assembly and of association;

and all laws shall be construed and applied so as not to abrogate or abridge any such freedom.

Art. 2. No law of the Parliament of Canada or the Legislatures of the Provinces shall abrogate or abridge any of the fundamental freedoms herein recognized and declared.

Art. 3. Nothing in this Part shall be construed as preventing such limitations on the exercise of the fundamental freedoms as are reasonably justifiable in a democratic society in the interests of public safety, order, health or morals, of national security, or of the rights and freedoms of others, whether imposed by the Parliament of Canada or the Legislature of a Province, within the limits of their respective legislative powers, or by the construction or application of any law.

Art. 4. The principles of universal suffrage and free democratic elections to the House of Commons and to the Legislative Assembly of each Province are hereby proclaimed to be fundamental principles of the Constitution.

Art. 5. No citizen shall, by reason of race, ethnic or national origin, colour, religion or sex, be denied the right to vote in an election of members to the House of Commons or the Legislative Assembly of a Province, or be disqualified from membership therein.

Art. 6. Every House of Commons shall continue for five years from the day of the return of the writs for choosing the House and no longer subject to being sooner dissolved by the Governor General, except that in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by the Parliament of Canada if the continuation is not opposed by the votes of more than one-third of the members of the House.

Art. 7. Every Provincial Legislative Assembly shall continue for five years from the day of the return of the writs for the choosing of the Legislative Assembly, and no longer, subject to being sooner dissolved by the Lieutenant-Governor, except that when the Government of Canada declares that a state of real or apprehended war, invasion or insurrection exists, a Provincial Legislative Assembly may be continued if the continuation is not opposed by the votes of more than one-third of the members of the Legislative Assembly.

Art. 8. There shall be a session of the Parliament of Canada and of the Legislature of each Province at least once in every year, so that twelve months shall not intervene between the last sitting of the Parliament or Legislature in one session and its first sitting in the next session.

Art. 9. Nothing in this Part shall be deemed to confer any legislative power on the Parliament of Canada or the Legislature of any Province.

#### PART II—LANGUAGE RIGHTS

Art. 10. English and French are the official languages of Canada having the status and protection set forth in this Part.

Art. 11. A person has the right to use English and French in the debates of the Parliament of Canada and of the Legislatures of Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, Prince Edward Island and Newfoundland.

Art. 12. The statutes and the records and journals of the Parliament of Canada shall be printed and published in English and French, and both versions of such statutes shall be authoritative.

Art. 13. The statutes of each Province shall be printed and published in English and French, and where the Government of a Province, prints and publishes its statutes in one only of the official languages, the Government of Canada shall print and publish them in the other official language; the English and French versions of the statutes of the Provinces of Quebec, New Brunswick and Newfoundland shall be authoritative.

Art. 14. A person has the right to use English and French in giving evidence before, or in any pleading or process in the Supreme Court of Canada, any courts established by the Parliament of Canada or any court of the Provinces of Quebec, New Brunswick and Newfoundland, and to require that all documents and judgments issuing from such courts be in English or French, and when necessary a person is entitled to the services of an interpreter before the courts of other provinces.

Art. 15. An individual has the right to the use of the official language of his choice in communications between him and the head or central office of every department and agency of the Government of Canada and of the governments of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island and Newfoundland.

Art. 16. A Provincial Legislative Assembly may, by resolution, declare that any part of Articles 13, 14, and 15 that do not expressly apply to that Province shall apply to the Legislative Assembly, and to any of the provincial courts and offices of the provincial departments and agencies according to the terms of the resolution, and thereafter such parts shall apply to the Legislative Assembly, courts and offices specified according to the terms of the resolution; and any right conferred under this Article may be abrogated or diminished only in accordance with the procedure prescribed in Article 50.

Art. 17. A person has the right to the use of the official language of his choice in communications between him and every principal office of the departments and agencies of the Government of Canada that are located in an area where a substantial proportion of the population has the official language of his choice as its mother tongue, but the Parliament of Canada may define the limits of

such areas and what constitutes a substantial proportion of the population for the purposes of this Article.

Art. 18. In addition to the rights provided by this Part, the Parliament of Canada and the Legislatures of the Provinces may, within their respective legislative jurisdictions, provide for more extensive use of English and French.

Art. 19. Nothing in this Part shall be construed as derogating from or diminishing any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Part with respect to any language that is not English or French.