

Copies to: Mr. Carter
Mr. Gravelle
Mr. Hurley

CONFIDENTIAL

July 17th, 1975.

MEMORANDUM FOR MR. ROBERTSON

Mr. Red

Thank you.

Re: The Second Approach:
The Language Options

WJK
18/01/75

I am attaching for your consideration another option which is a slight variation on those prepared by Jim Hurley.

1. I wonder if, at least as a first step, we should propose a version based on the Victoria Charter which assumes no commitment from the provinces, at the same time, leaving it open for provinces to adopt language obligations if they wish. I assume the language option (if it is pursued as a viable alternative) will be shown first to Mr. Bourassa, therefore I am inclined to think he should be shown a version which commits only the federal government to action. Then as the second round of discussions progressed with the other provinces, the language obligations could be modified to apply to those provinces that were still agreeable (for example, New Brunswick). That is, I would be inclined to favour Jim's fourth option. It might be counter-productive to give Mr. Bourassa a version based on the assumption the other provinces still agree to undertake the obligations therein before we are certain they do agree.

2. With respect to Article ¹⁰~~19~~ of the Victoria Charter:

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.

I am inclined to think that we should include this article in the draft. I think we should proceed on the assumption that we want to present a version most likely to be eventually acceptable to all provinces and that article perhaps makes the whole package more saleable in the West.

The paragraph has no operative effect. It is an interpretation section. It has the advantages of having been agreed to at Victoria. It provides some window-dressing for the West, while at the same time requiring no commitment from anyone. On the other hand it is a rather awkward section. It doesn't fit too well in the overall scheme of the language sections and seems superfluous.

3. Another point I would raise is whether we would want to add to Jim's 4th option the obligation, undertaken by the federal government at Victoria, to publish provincial statutes in French (or English), if a province does not (Article 13 of the Victoria Charter). You might also want to consider whether the federal government would want to undertake the obligation to provide interpreters in provincial and federal courts. (Article 14 of the Victoria Charter provided that when necessary, persons would be entitled to the services of an interpreter before the courts but it did not state which level of government would pay for this service in provincial courts. I assume it was the provincial governments.) These are both "language guarantees" that the federal government could provide without acquiescence from provincial governments since they involve only an expenditure of money.

*all our
debates
about both
) these -
because of the
penning words
) Article 13 +
be possible
obligation of
federal
"intervention"
in provincial
affairs (in a
sensation that
we are
assuming
"federal")
and because
) the
problem
set in Article 14.*

A factor to consider in this regard is that the Victoria language guarantees were a restatement and expansion of those guarantees already existing under section 133 of the B.N.A. Act. Thus sections 1, 2, 3, and most of 4 (of Jim's option 4) do not add anything to the guarantees already existing under 133. Sections 6 and 8 create the possibility for the extension of language guarantees but do not create new ones.

The only sections which add language guarantees are 5 and 7, and 7 does so in a somewhat oblique way.

Art. 5 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.

Art. 7 A person has the right to the use of the official language of his choice in communications between him and every principle 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.

Therefore you may wish to consider whether adding an obligation to publish provincial statutes or to provide interpreters should be added in order to make the package more substantial.

4. Since the language guarantees we are now suggesting are partly a redraft of section 133 of the B.N.A. Act, but not a complete redraft (I am assuming that Quebec will not, in the light of Bill 22, want to undertake additional language obligations, or even have the 133 obligations to which that province is subject restated) I think we would probably need to add a clause to the first article of the draft so that we ensure that we do not wipe out the 133 obligations to which Quebec is presently subject. Such a clause might be along the following lines:

A.

but no provision in this part shall derogate from any right, privilege, or obligation existing under any other provision of the Constitution.

I have added this to my memo.

Barbara

Barbara Reed

Attach.

P.S. After preparing the above I received your note of July 17th.

Art. 9 In addition to the rights provided by this Part, the Parliament of Canada may, within its legislative jurisdiction, provide for more extensive use of English and French.

Art. 10 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.

LANGUAGE RIGHTS

Art. 1 English and French are the official languages of Canada having the status and protection set forth in this Part but no provision in this Part shall derogate from any right, privilege or obligation existing under any other provision of the Constitution.

Art. 2 A person has the right to use English and French in the debates of the Parliament of Canada.

Art. 3 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. 4 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.

Art. 5 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 and any courts established by the Parliament of Canada, 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 the provinces.

Art. 6 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.

Art. 7 A Provincial Legislative Assembly may, by resolution, declare that any part of Articles 4, 5 and 6 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. 8 A person has the right to the use of the official language of his choice in communications between him and every principle 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.