

CONFIDENTIEL

le 18 juillet 1975

NOTE POUR MONSIEUR ROBERTSON

Rapatriement de la Constitution

Suite à votre note du 17 juillet, j'ai pris connaissance du projet de mémoire au Premier ministre et ses annexes.

Je n'ai qu'un seul commentaire à formuler et il porte sur l'option C énoncée à la page 2 - "l'opting-in". La grande préoccupation de M. Hatfield c'est que les mesures législatives pour donner reconnaissance au français au Nouveau-Brunswick ne soient pas répudiées par un autre gouvernement.

A l'annexe 2 "Victoria rights option" une répudiation pure et simple ne serait pas possible puisque l'article 4 modifiée en vertu de l'option C serait soumis à la procédure d'amendement prescrit par l'article 50 tel qu'énoncé à l'article 7 de l'annexe 2.

Si nous devons utiliser une solution de rechange, c'est-à-dire l'annexe 3 "federal rights option" il me semble qu'on pourrait également y incorporer l'option C en modifiant l'article 6 dont le début se lirait comme suit:

"A provincial legislative assembly may, by resolution, declare that any part of articles 3, 4 and 5 shall apply ... etc".

Frank Carter est d'accord avec cette suggestion.

Pour ce qui est des commentaires de Jim Hurley au sujet de l'article 10 du "Victoria rights option", Barbara Reed ne croit pas qu'en droit, cet article crée des droits juridiques nouveaux ou reconnaisse constitutionnellement des droits coutumiers. Cette distinction est peut-être

... 2

Added to
my notes.

vraie sur le plan juridique mais il n'en reste pas moins que l'article 10 comporte des difficultés d'ordre politique, qu'on veuille le supprimer ou l'incorporer. Le supprimer risque de provoquer des protestations des autres communautés ethniques au Canada. Le laisser risque de créer des attentes de leur part qui dépassent largement le cadre de la politique de multiculturalisme tel que nous le connaissons.

Je crois que Barbara Reed vous prépare une note à ce sujet.

En fait, j'arrivai bien l'annexe III - comme formulation.



Pierre Gravelle

c.c. M. Carter
M. Hurley
Mme Reed

July 17, 1975.

Appendix 1

Revised Form for a Proclamation
of the Governor General: "First Approach"

Whereas it is fitting that it should be possible to amend the constitution of Canada in all respects by action of the appropriate instrumentalities of government in Canada acting separately or in concert as may best suit the matter in question;

And whereas changes in the constitution, interpretation of its provisions or action by the federal Parliament or government should not endanger the continuation and full development of the French language in Canada and the culture based thereon and it is desirable that the two official languages and the cultures based on them should be equally assured of preservation and full development in Canada;

And whereas it is desirable that the Parliament and Government of Canada and the Legislatures and governments of the provinces act effectively to promote equality of opportunity and an acceptable level of public services among the different regions of Canada;

Therefore it is desirable to establish:

- (a) a method for the amendment in Canada of those parts of the constitution of general interest and concern which cannot now be amended in Canada in which the consent will be required of the Legislatures of provinces representative of both the official language groups of Canada as well as the Legislatures of provinces in all of the geographical regions of Canada;
- (b) means by which provinces can participate in the selection of persons to be appointed to the Supreme Court of Canada; and
- (c) principles to guide the Parliament of Canada in the exercise of powers allotted to it under the constitution of Canada and to guide the Government of Canada in the exercise of powers conferred upon it by the constitution of Canada and by laws enacted by the Parliament of Canada;

Now therefore I do proclaim
as follows:

1. ... (the method of amendment
- Part IX of Victoria less paras
53, 54, 55)
2. ... (appointments to the Supreme Court
- Part IV of Victoria)
3. The Parliament of Canada, in the exercise of powers allotted to it under the constitution of Canada, and the government of Canada in the exercise of powers conferred upon it by the constitution of Canada and by laws enacted by the Parliament of Canada shall be guided by, among other considerations for the welfare and advantage of the people of Canada, the knowledge that a fundamental purpose underlying the federation of Canada is to ensure the preservation and the full development of the two official languages of Canada and the cultures based on them.
4. The Parliament and Government of Canada and the Legislatures and governments of the provinces are committed to:
 - (a) the promotion of equality of opportunity and well being for all individuals in Canada;
 - (b) the assurance, as nearly as possible, that essential public services of reasonable quality are available to all individuals in Canada; and
 - (c) the promotion of economic development to reduce disparities in the social and economic opportunities for all individuals in Canada wherever they may live,

but this commitment shall not have the effect of altering the distribution of powers and shall not compel the Parliament of Canada or Legislatures of the provinces to exercise their legislative powers.

LANGUAGE RIGHTS

Art. 1 English and French are the official languages of Canada having the status and protection set forth in this Part.

Art. 2 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. 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; (the English and French versions of the statutes of the Provinces of Quebec, New Brunswick and Newfoundland shall be authoritative.)

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, 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 the other 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 and of the Governments of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island and Newfoundland.

Art. 7 A Provincial Legislative Assembly may, by resolution, declare that any part of Articles 4, 5 and 6 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. 8 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. 9 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. 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.

Appendix 3

July 17, 1975.

LANGUAGE RIGHTS

Art. 1 English and French are the official languages of Canada having the status and protection set forth in this Part.

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 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.

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. 6 A Provincial Legislative Assembly may, by resolution, declare that any part of Articles 4 and 5 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. 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.

Art. 8 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.