
**Compilation of primary documents to assist
in interpreting the Language Rights in
Section 133 of the *Constitution Act, 1867***



Table of Contents

Part 1	Language Rights Prior to 1867	-
Part 2	Language Rights in Successive Drafts of Section 133 from the Quebec Resolutions, 1864 to the <i>Constitution Act, 1867</i>	2
Part 3	Debates on Language Rights in the Confederation Debates in the Province of Canada, 1865-67	10
Part 4	Post-Confederation Debates on Section 133	18

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

-----o0o-----

PART 1:

Language Rights Prior to 1867

-----o0o-----

Coming soon.

-----o0o-----

PART 2:

Language Rights in Successive Drafts of
Section 133 from the Quebec Resolutions,
1864 to the *Constitution Act, 1867*

-----o0o-----

The Quebec Resolutions (1864)¹

26 October 1864: Working Draft No. 1

No mention of language clause.

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 1, October 26th, 1864, MG 26 A, Vol. 46, pp. 18164-18168. Click [HERE](#).)

-----o0o-----

26-27 October 1864: Working Draft No. 2

[41 ½] That both the English and French languages may be employed in the General Legislature and in its proceedings, and [illegible] in the Local Legislature of Lower Canada, and in the Federal and Local Courts of Lower Canada.

¹ All transcriptions from the Quebec Resolutions are from [Charles Dumais, *The Quebec Resolutions: Including Several Never-Published Preliminary Drafts by George Brown and John A. Macdonald, and a Collection of all Previously-Published Primary Documents Relating to the Conference, October 10, 1864-October 29th, 1864* \(CCF, 2001\).](#)

SECTION 133, LANGUAGE RIGHTS

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 2, October 26th-27th, 1864, MG 26 A, Vol. 46, pp. 18142-18155. This text is found on p. 18154. Click [HERE](#).)

-----o0o-----

27 October 1864: Working Draft No. 3

That both the English and French languages may be employed in the General Legislature and in its proceedings, and also in the Local Legislature of Lower Canada, and in the Federal and Local Courts of Lower Canada

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 3, October 27th, 1864, MG 26 A, Vol. 46, pp. 18156-18158. This text is found on p. 18158. Click [HERE](#).)

-----o0o-----

27 October 1864: Working Draft No. 4

[46.] ~~That~~ both the English and French languages may be employed in the General ~~Legislature~~ **[Parliament]** and in its proceedings, and in the Local Legislature of Lower Canada, and **[also]** in the Federal **[Courts]** and ~~Local~~ **[in the]** Courts of Lower Canada.

(Source: John A. Macdonald, Drafts of the Quebec Resolutions, Working Draft No. 4, October 27th, 1864, MG 26 A, Vol. 46, pp. 18136-18138. This text is found on p. 18138. Click [HERE](#).)

-----o0o-----

14 March 1865: Quebec Resolutions as adopted in the Legislature of the Province of Canada

46. Both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada.

(Source: John A. Macdonald, The Quebec Resolutions, 1864 as Adopted in the Legislature of the Province of Canada, Vol. 46, pp. 18210-18216. This text is found on p. 18214. Click [HERE](#).)

-----o0o-----

The London Resolutions (1866)

4 December 1866: Version No. 1, Copy 1

SECTION 133, LANGUAGE RIGHTS

46. Both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada.

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 1, Copy 1, December 4th, 1866 (MG 26 A, Vol. 46, pp. 18184-18190). This text is found on p. 18188. Click [HERE](#).)

-----o0o-----

13-14 December 1866: Version No. 2, Copy 1

46. Both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada.

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 2, Copy 1, December 13-14th (MG 26 A, Vol. 46, pp.18176-18183). This text is found on p. 18180. Click [HERE](#).)

-----o0o-----

13-14 December 1866: Version No. 2, Copy 2

46. Both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada. **[added in margin: agreed]**

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 2, Copy 2, December 13-14th, 1866 (MG 26 A, Vol. 46, pp. 18191-18196). This text is found on p. 18195. Click [HERE](#).)

-----o0o-----

14 December 1866: Version No. 3, Copy 1

46. Both the English and French languages may be employed in the General Parliament and in its proceeding, and in the Local Legislature of Lower Canada, and also in the Federal Courts and in the Courts of Lower Canada. **[added in margin: carried]**

(Source: John A. Macdonald Fonds, Drafts of the London Resolutions – Version No. 3, Copy 1, December 14th, 1866 (MG 26 A, Vol. 46, pp. 18197-18209). This text is found on p. 18205. Click [HERE](#).)

-----o0o-----

28 December 1866: Final Version

45. Both the English and French languages may be employed in the General Parliament, and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts, and in the Courts of Lower Canada.

SECTION 133, LANGUAGE RIGHTS

(Source: London Resolutions as found in Joseph Pope (ed), *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act* (Toronto: Carswell Co. Ltd., 1895) at 98-110. This text is found on p. 107. Click [HERE](#).)

-----o0o-----

Constitution Act, 1867

n.d. (probably early January, 1867): Rough Draft, John A. Macdonald's Copy²

44. The English and French language may both be employed in Parliament, and in its proceedings, and in the Legislature and Courts of Lower Canada, and also in the Courts of the Confederation which may be established under this Act.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Rough Draft, John A. Macdonald's Copy, n.d. (MG 26, A, Vol. 48, pp. 18845-18870). This text is found on p. 18862. Click [HERE](#).)

-----o0o-----

23 January 1867: 23rd January Draft, Copy 2

43. Either the English or the French Language may be used by any Person in the Debates of the Houses of Parliament of the United Colony, and of the Houses of the Provincial Assembly of Lower Canada, and either or both of those Languages may be used in the respective Records and Journals of those Houses, and either of those Languages **[shall]** may be used by any Person or in any Pleading or Process in or issuing from any Court of the United Colony, and in or from all or any of the Provincial Courts of Lower Canada.

[Qu. whether, as to Courts of the United Colony, this should not be confined to such of those Courts as sit in Lower Canada.]

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 23rd January Draft, Copy 2, January 23rd, 1867 (MG 26, A, Vol. 48, pp. 18989-19000). This text is found on pp. 18997-18998. Click [HERE](#).)

-----o0o-----

31 January 1867: 2nd Draft³

² There are some illegible markings on this clause.

³ There is another version of this draft with handwritten provision and notes, where the clause is renumbered, first to "77", then "81". See [John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 2nd Draft with Handwritten Provisions and Notes, January 31st, 1867 \(MG 26, A, Vol. 48, pp. 19040-19082\)](#).

SECTION 133, LANGUAGE RIGHTS

66.—Either the English or the French language may be used by any person in the Debates of the Houses of Parliament of Canada, and of the Houses of Parliament of Lower Canada, and both of these languages shall be used in the respective records and journals of those Houses, and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada, and in or from all or any of the Provincial Courts of Lower Canada.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 2nd Draft, January 31st, 1867 (MG 26, A, Vol. 48, pp. 19022-19039). This text is found on p. 19039. Click [HERE](#).)

-----o0o-----

n.d. (between Jan. 31 & Feb. 2, 1867): 3rd Draft, Early Copy⁴

81.—Either the English or the French language may be used by any person in the Debates of the Houses of Parliament of Canada, and of the Houses of Parliament of Lower Canada, and both of these languages shall be used in the respective records and journals of those Houses, and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada, and in or from all or any of the Provincial Courts of Lower Canada.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 3rd Draft, Early Copy, n.d. (MG 26, A, Vol. 48, pp. 19101-19124). This text is found on pp. 19123-19124. Click [HERE](#).)

-----o0o-----

n.d. (1867): 4th Draft, Later Version, Revised Copy

~~127~~ **[124]**.—Either the English or the French language may be used by any person in the Debates of the Houses of Parliament, and of the Houses of the Legislature of Quebec, and both of these languages shall be used in the respective records and journals of Parliament, and of the Legislature of Quebec, and the Laws and Statutes of Parliament, and of the Legislature of Quebec, shall be printed and published in separate volumes of the English and French languages respectively, and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada, created under this Act, and in or from all or any of the Courts of Quebec.⁵

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 4th Draft, Later Version, Revised Copy, n.d. (MG 26, A, Vol. 49/1, pp. 19399-19450). This text is found on p. 19446. Click [HERE](#).)

-----o0o-----

n.d. (1867): 4th Draft, Final Version

⁴ The wording is unchanged from the 2nd draft. The revised copy is also the same. See [John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 3rd Draft, Revised, February 2nd, 1867 \(MG 26, A, Vol. 48, pp. 19125-19148\)](#).

⁵ This clause appears to be signed off on in this version.

SECTION 133, LANGUAGE RIGHTS

127.—Either the English or the French language may be used by any person in the Debates of the Houses of Parliament, and of the Houses of the legislature of Quebec, and both of these languages shall be used in the respective records and journals of Parliament, and of the Legislature of Quebec, and the Laws and Statutes of Parliament, and of the legislature of Quebec, shall be printed and published in separate volumes of the English and French languages respectively, and either of those languages may be used by any person or in any pleader or process in or issuing from any Court of Canada, created under this Act, and in or from all or any of the Courts of Quebec.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – 4th Draft, Final Version, n.d. (MG 26, A, Vol. 49/2, pp. 19614-19664). This text is found on p. 19661. Click [HERE](#).)

-----o0o-----

n.d. (1867): H.L. Bill (Floor)

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – H.L. Bill (Floor), n.d. (MG 26, A, Vol. 49/2, pp. 19665-19711). This text is found on p. 19697. Click [HERE](#).)

-----o0o-----

Local Constitutions Drafts Package (1866-1867)

n.d.: Early Package [n.d.]

36. Both the English and French languages may be employed in the General Parliament, and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal Courts, and in the Courts of Lower Canada.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Early Package, n.d. (MG 26, A, Vol. 49/2, pp. 19451-19461). This text is found on p. 19460. Click [HERE](#).)

-----o0o-----

n.d.: Early Package with Reilly's Notes

128. ~~[32]~~ [126]—Either the English or the French language may be used by any person in the Debates of the Houses of Parliament, and of the Houses of the Legislature of Quebec, and both of

SECTION 133, LANGUAGE RIGHTS

these languages shall be used in the respective records and journals of Parliament, and of the Legislature of Quebec, and the Laws and Statutes of Parliament, and of the Legislature of Quebec, shall be printed and published in separate volumes of the English and French languages respectively, and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada [created under this act] and in or from all or any of the Courts of Quebec.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Early Package with Reilly’s Notes, n.d. (MG 26, A, Vol. 49/2, pp. 19462-19480). This text is found on p. 19476. Click [HERE](#).)

-----o0o-----

n.d.: Revised Package

128.—Either the English or the French language may be used by any person in the Debates of the Houses of Parliament, and of the Houses of the Legislature of Quebec, and both of these languages shall be used in the respective records and journals of Parliament, and of the Legislature of Quebec, and the Laws and Statutes of Parliament, and of the Legislature of Quebec, shall be printed and published in separate volumes of the English and French languages respectively, and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada [created under this act] and in or from all or any of the Courts of Quebec.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Revised Package, n.d. (MG 26, A, Vol. 49/2, pp. 19500-19518). This text is found on pp. 19515-19516. Click [HERE](#).)

-----o0o-----

n.d.: Revised Package, Copy 4

128.—Either the English or the French language may be used by any person in the Debates of the Houses of Parliament, and of the Houses of the Legislature of Quebec, and both of these languages shall be used in the respective records and journals of Parliament, and of the Legislature of Quebec, and the Laws and Statutes of Parliament, and of the Legislature of Quebec, shall be printed and published in separate volumes of the English and French languages respectively, and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada [of Canada created under the provisions of this act] and in or from all or any of the Courts of Quebec.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Revised Package, Copy 4, n.d. (MG 26, A, Vol. 49/2, pp. 19576-19594). This text is found on pp. 19591-19592. Click [HERE](#).)

-----o0o-----

n.d.: Revised Package, H.B. Morse’s Copy

SECTION 133, LANGUAGE RIGHTS

128.—Either the English or the French language may be used by any person in the Debates of the Houses of Parliament, and of the Houses of the Legislature of Quebec, and both of these languages shall be used in the respective records and journals of Parliament, and of the Legislature of Quebec, and the Laws and Statutes of Parliament, and of the Legislature of Quebec, shall be printed and published in separate volumes of the English and French languages respectively, and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada **[created under this act]** and in or from all or any of the Courts of Quebec.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Revised Package, H.B. Morse’s Copy, n.d. (MG 26, A, Vol. 49/2, pp. 19595-19613). This text is found on pp. 19610-19611. Click [HERE](#).)

-----o0o-----

n.d.: Revised Package, Alexander Galt’s Copy

128.—Either the English or the French language may be used by any person in the Debates of the Houses of Parliament, and of the Houses of the Legislature of Quebec, and both of these languages shall be used in the respective records and journals of Parliament, and of the Legislature of Quebec, and the Laws and Statutes of Parliament, and of the Legislature of Quebec, shall be printed and published in separate volumes of the English and French languages respectively, and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada **[created under the provision[s] of this act]** and in or from all or any of the Courts of Quebec.

(Source: John A. Macdonald Fonds, Drafts of the British North America Act, 1867 – Local Constitutions Drafts Revised Package, Alexander Galt’s Copy, n.d. (MG 26, A, Vol. 49/2, pp. 19557-19575). This text is found on pp. 19572-19573. Click [HERE](#).)

-----o0o-----

PART 3:

Debates on language rights in the Confederation Debates in the Province of Canada

-----o0o-----

[Province of Canada \(1865\)](#)

March 8, 1865: Félix Geoffrion, speaking in the Legislative Assembly of Canada (click [HERE](#) to view a PDF of the 1865 edition of the Confederation Debates, then scroll to p. 779)

I will now call the attention of the House, and particularly of the French-Canadian members, to [the forty-sixth resolution](#), which relates to the use of the French language in the Federal Legislature. It is as follows:—“The English and French languages may be used simultaneously in the proceedings of the Federal Legislature as well as in the Legislature of Lower Canada, and also in the Federal courts and in the courts of Lower Canada.”

A close examination of this resolution shows at once that it does not declare that the French language is to be on the same footing as the English language in the Federal and Local Legislatures; in place of the word “shall,” which ought to have been inserted in the resolution, the word used is “may,” so that if the British majority decide that the *Votes and Proceedings* and Bills of the House shall be printed only in English, nothing can prevent the enactment taking effect.

Of course we shall be allowed to use the French language in debate, but on the other hand, it is evident that the majority may, whenever they choose, enact that the bills and proceedings of the House shall not be printed in French, and consequently the clause affords no security whatever to us French-Canadians. I take it for granted that as regards all the bills or resolutions of this House, the meaning to

- (p. 780)

be given to words is that given to them by the law of the country, and I am therefore justified, when explaining the resolutions before us, in holding to the very letter of their resolutions, and it needs no effort of the imagination to discover the intention of those who prepared them.

[The provincial statute 22 Victoria, chap. 29](#), relative to the interpretation of the statutes, says:—“Whenever by any act it is provided that a thing shall be done, the obligation to do it is to be inferred; but when it is said that a thing may be done, the power of doing it is permissive.” In [the resolutions submitted us](#), the word used in the English version is “may,” which is translated into

SECTION 133, LANGUAGE RIGHTS

French by the word “*pourront*” and it is said that the English and French languages may be used simultaneously in the proceedings of the Federal Parliament as well as in the Legislature of Lower Canada, and also in the Federal courts and the courts of Lower Canada.

It is easy to see, then, that the use of the French language is rendered extremely precarious, and that the majority may proscribe it in our *Votes and Proceedings*, and in our Legislature. The Lower Canada members who have always supported the Ministry ought to urge them to insert a clause in the resolutions declaring that the French language shall be on the same footing as the English language; the guarantee afforded us by the resolutions, as they now stand, amounts to nothing.

I am not the first to point out the danger to our institutions and our laws; the *Canadien* of this city has enumerated them over and over again, and the honorable member for Montmorency [Joseph Cauchon] himself, who quite recently admitted in this House that he was the editor in chief of the *Journal de Québec*, wrote as follows [in that paper on the 18th January, 1865](#). After having spoken of the past conduct of the Upper Canadians, and more particularly of the Honorable President of the Council (Hon. Mr. Brown), he says:—

For Lower Canada there are other questions still besides the question of money; there are the religious, social and national questions. Here it is that the greatest difficulties exist in the way to the success of the scheme, for a few slight changes in the letter of the scheme—changes which will in no way affect the interests of the other provinces—will cause the project to be accepted by the immense majority of the population of the country. We do not hesitate to say that it is astounding that the Conference should have approximated so closely to equity, after a few days only of work, and in the midst of innumerable obstacles.

It seems to me, Mr. Speaker, that if the honorable member for Montmorency [Joseph Cauchon] was right in telling the Ministry that our nationality and our institutions were in danger, and that changes were required, we French-Canadian members are bound to see that the resolutions submitted to us afford sufficient protection to those institutions, and that the resolutions are not written in such a way as to be susceptible of two interpretations.

-----o0o-----

Hector-Louis Langevin, p. 781

Another point on which the honorable member for Verchères [Félix Geoffrion] insisted, no doubt with the view of obtaining information, which I shall be delighted to afford if it should induce him to vote for the resolutions—and I am perfectly certain it ought to be sufficient—is the point as to the use of the French language under Confederation. [The forty-sixth resolution](#) is as follows:—

The English and French languages may be used simultaneously in the proceedings of the Federal Parliament as well as in the Legislature of Lower Canada and in the Federal courts and in the courts of Lower Canada.

The honorable member for Verchères [Félix Geoffrion] says—“It is true that the French language may be used in the Federal Parliament and in the Legislature of Lower Canada, as well as in the courts of justice of the Confederation, but the resolutions do not affirm that that language may be used in the drafting of laws and in the *Votes and Proceedings* of the Federal and Local Legislatures.”

Well,

SECTION 133, LANGUAGE RIGHTS

- (p. 782)

Mr. Speaker, I am quite sure the honorable member for Verchères [Félix Geoffrion] will be delighted to learn that it was perfectly well understood at the Conference of Quebec that the French language should not only be spoken in the courts of justice, in the Federal Parliament and in the Legislature of Lower Canada, but that, precisely as is now the case, the *Votes and Proceedings* of the Legislature, as well as all the Federal laws and those of the Legislature of Lower Canada, should be printed in both languages.

And what is still more, under Confederation the French language will be spoken before the Federal tribunals, an advantage which we do not possess at present when we apply to the Court of Appeals of Great Britain. So that the honorable member for Verchères [Félix Geoffrion] and this honorable House will gladly admit that its representatives at the Conference of Quebec did not fail in their duty on that point. These are the principles upon which the new Constitution will be based, and I feel justified in going so far as to say that it was impossible to secure more effectually this essential privilege of our nationality, and at the same time our civil and religious institutions. I was anxious to offer these explanations to the honorable member for Verchères [Félix Geoffrion] and to the House, and I trust they will completely satisfy the country.

-----oOo-----

Edouard Rémillard & Maurice Laframboise, p. 786

Edouard Rémillard [Bellechasse]—Mention is also made of the use of the French language; it is said that it cannot be used in the Federal Parliament. But, for my part, I am of opinion that if the scheme is adopted, the French language will be more used and will be held in higher estimation in the Federal Parliament, than it has been in this Legislature for some years. It is feared that the laws, the documents and the proceedings of the Federal Parliament are not to be printed in the French language. But what does [the 46th clause of the resolutions](#) say? It says:—

Both the English and French languages may be employed in the General Parliament, and in its proceedings, and in the Local Legislature of Lower Canada, and also in the Federal courts, and in the courts of Lower Canada.

Thus, if the use of the French language can be excluded, so also may the use of the English language be excluded, for both are on an equal footing. Because it is not stated that the laws and the proceedings of the Federal Parliament shall be printed in the French language, the conclusion is drawn that they will be so in English; but the same thing might be said of the English language, as it is not stated that they will be printed in that language.

The hon. member for Verchères (Mr. Geoffrion) would have something more; instead of the resolutions setting forth that the French language may be used, he would have them declare that it shall be used; in that case the members from Lower Canada might be compelled to speak French; but are the Upper Canadian members also to be forced to speak that language, they who do not understand a word of it? I should be with the hon. member for Verchères [Félix Geoffrion] if we could compel Lower Canadian members to speak French, and Upper Canadian members to speak English, as in that case each would learn the language of the other.

I am really of opinion that if the Hon. Attorney General

SECTION 133, LANGUAGE RIGHTS

- (p. 787)

for Lower Canada [George-Étienne Cartier] had never spoken anything but French in this House, the members from Upper Canada would have learned that language in order to understand him; but as he wishes to make them understand him without putting them to that trouble, he most frequently speaks English.

Some Hon. Members—Hear, hear.

Edouard Rémillard [Bellechasse]—It is said that in the resolutions the guarantees which we seek to have for our language, our laws and our institutions are not clearly enough expressed, and that the Imperial Government might, consequently, confer upon us something other than that for which we ask. But could not the Imperial Government impose Confederation upon us as it did the union? And as it does not do so, but is merely desirous of being consulted, we ought not to believe that it will impose upon us conditions which are opposed to our interests.

Maurice Laframboise [Bagot]—It is proposed to impose it on the Lower Provinces, who do not wish for it.

[...]

Edouard Rémillard [Bellechasse]—Well, I listened with pain to the language used by the hon. member for Richelieu [Joseph Perrault]. Should what he said in French be repeated by some one in English, I should greatly fear that it would give rise to prejudice against us among the English members.

Some Hon. Members—Hear, hear.

Edouard Rémillard [Bellechasse]—Last year he said to the members from Upper Canada,—“The French-Canadians are learning the use of arms, and if you insist upon having representation based upon population, they will be turned against you;” and this year he says that one Lower Canadian can stand against ten Upper Canadians. He considers himself fortunate in being under

- (p. 788)

the protection of the English flag, and yet his whole speech was one insult to the English Government.

Some Hon. Members—Hear, hear.

Edouard Rémillard [Bellechasse]—Does he forget, then, that the French-Canadians are in a minority? He talked a great deal about the great men who saved our nationality; but if those men had made use of such language as the hon. member has done, they would not have obtained that which they did obtain.

Some Hon. Members—Hear, hear.

Edouard Rémillard [Bellechasse]—Our nationality would long since have passed away; for,

SECTION 133, LANGUAGE RIGHTS

I repeat it, his whole speech was one insult to England and Englishmen. Fortunately his speech was not understood by the English members of this House, and consequently it could produce no effect upon them; and those who did understand him, moreover, are aware that he spoke for himself alone, and that he does not represent the opinions of the Lower Canadian members or of the Lower Canadian people. I am therefore convinced that they will bear no ill-will to the French-Canadians in consequence of that speech.

-----o0o-----

François Evanturel, John A. Macdonald, Antoine-Aimé Dorion, George-Étienne Cartier, p. 944-945

Those friends have expressed alarm in relation to one of the clauses of the resolutions, and have requested me to ask an explanation from the Hon. Attorney General for Upper Canada [John A. Macdonald], as to the interpretation of that clause. I have therefore to ask him whether [article 46 of the resolutions](#), which states that “both the English and French languages may be employed in the General Parliament and in its proceedings, and in the Local Legislature of Lower Canada,” is to be interpreted as placing the use of the two languages on an equal footing in the Federal Parliament? Instating the apprehensions entertained by certain persons on this subject—and I consider that it is a mark of patriotism on their part, and that their apprehensions may be legitimate—I hope the Government will not impute to me any hostile intention, and will perceive that the course I adopt is in their interest, as it will give them an opportunity of dissipating the apprehensions in question.

Some Hon. Members—Hear, hear.

John A. Macdonald [Kingston, Attorney-General West]—I have very great pleasure in answering the question put to me by my hon. friend from the county of Quebec [François Evanturel]. I may state that the meaning of one of the resolutions adopted by the Conference is this, that the rights of the French-Canadian members as to the status of their language in the Federal Legislature shall be precisely the same as they now are in the present Legislature of Canada in every possible respect.

I have still further pleasure in stating that the moment this was mentioned in Conference, the members of the deputation from the Lower Provinces unanimously stated that it was right and just, and without one dissentient voice gave their adhesion to the reasonableness of the proposition that the status of the French language, as regards the procedure in Parliament, the printing of measures, and everything of that kind, should be precisely the same as it is in this Legislature.

Some Hon. Members—Hear, hear.

Antoine-Aimé Dorion [Hochelaga]—I do not rise to offer any lengthened remarks, but to draw for a moment the attention of the members of the Administration, with a view to obtain some information in connection with this scheme; but before doing so, I would say a word in reply to the explanation given by the Hon. Attorney General West [John A. Macdonald] to the question put by the hon. member for the county of Quebec (Hon. Mr.

SECTION 133, LANGUAGE RIGHTS

Evanturel), with regard to the use of the French language.

The Hon. Attorney General West [John A. Macdonald] stated that the intention of delegates at the Quebec Conference was to give the same guarantees for the use of the French language in the Federal Legislature, as now existed under the present union. I conceive, sir, that this is no guarantee whatsoever, for in the [Union Act](#) it was provided that the English language alone should be used in Parliament, and the French language was entirely prohibited; but this provision was subsequently repealed by the [11th and 12th Victoria](#), and the matter left to the discretion of the Legislature.

So that if, to-morrow, this Legislature choose to vote that no other but the English language should be used in our proceedings, it might do so, and thereby forbid the use of the French language. There is, therefore, no guarantee for the continuance of the use of the language of the majority of the people of Lower Canada, but the will and the forbearance of the majority. And as the number of French members in the General Legislature, under the proposed Confederation, will be proportionately much smaller than it is in the present Legislature, this ought to make hon. members consider what little chance there is for the continued use of their language in the Federal Legislature. This is the only observation I have to make on this subject, and it was suggested to me by the answer of the Hon. Attorney General West [John A. Macdonald].

John A. Macdonald [Kingston, Attorney-General West]—I desire to say that I agree with my hon. friend that as it stands just now the majority governs; but in order to cure this, it was agreed at the Conference to embody the provision in the Imperial Act.

Some Hon. Members—Hear, hear.

John A. Macdonald [Kingston, Attorney-General West]—This was proposed by the Canadian Government, for fear an accident might arise subsequently, and it was assented to by the deputation from each province that the use of the French language should form one of the principles on upon which the Confederation should be established, and that its use, as at present, should be guaranteed by the Imperial Act.

Some Hon. Members—Hear, hear.

- (p. 945)

George-Étienne Cartier [Montreal East, Attorney-General East]—I will add to what has been stated by the Hon. Attorney General for Upper Canada [John A. Macdonald], in reply to the hon. member for the county of Quebec and the hon. member for Hochelaga [Antoine-Aimé Dorion], that it was also necessary to protect the English minorities in Lower Canada with respect to the use of their language, because in the Local Parliament of Lower Canada the majority will be composed of French-Canadians. The members of the Conference were desirous that it should not be in the power of that majority to decree the [George-Étienne Cartier] abolition of the use of the English language in the Local Legislature of Lower Canada, any more than it will be in the power of the Federal Legislature to do so with respect to the French language. I will also add that the use of both languages will be secured in the Imperial Act to be based on these resolutions.

SECTION 133, LANGUAGE RIGHTS

Some Hon. Members — Hear, hear.

Antoine-Aimé Dorion [Hochelaga] — I am very glad to hear this statement; but I fail to see anything in the resolutions themselves which gives such an assurance, in proof of which we have the honorable member for Quebec county [François Evanturel] asking how the matter really stands. But it is not simply for the use of the French language in the Legislature that protection is needed—that is not of so great importance as is the publication of the laws and proceedings of Parliament. The speeches delivered in this House are only addressed to a few, but the laws and proceedings of the House are addressed to the whole people, a million or nearly a million of whom speak the French language. I now beg to address one or two observations on a different subject. When the question was first brought before us, I drew the attention of the Government to the discrepancy between the printed resolutions which are now submitted to us, and the resolutions which were despatched to the members of the Legislature, during the recess, by the Hon. Provincial Secretary [William McDougall].

-----oOo-----

Charles De Niverville, p. 950-951

Charles De Niverville [Three Rivers] — In truth, what kind of liberty have we, who do not understand the English language? We are at liberty to hold our tongues, to listen, and to understand if we can.

Some Hon. Members — Hear, hear, *and continued laughter*.

Charles De Niverville [Three Rivers] — Under the Confederation, the Upper Canadians will speak their language, and the Lower Canadians theirs, just as we do now; with this difference, that they who count a large majority of their countrymen in the House, may hope to hear their language spoken the oftenest, as new members will use the language of the majority.

I intend no reproof to the honorable members who have spoken in English on the question now before the House, thus depriving us of the pleasure of understanding them, and, therefore, of enjoying their eloquence, and being convinced by their logic. What they have done on the present occasion is a simple act of justice due to the majority of this House, and one which the French-Canadians have always rendered with pleasure. But if we follow the example of most French-Canadians in days gone by, we shall not keep our language long. How often do we find in the towns, nay, even in the country parts, Canadians who have no sooner caught up two words of English than they run off with delight to repeat them to their neighbors.

Emigration to the United States, which will cease under Confederation (for we shall have the management of our public lands), has been a principal cause of that stupid mania with which all seem to be seized who have lived some time among our neighbors and returned to Canada. To give you an idea of that lamentable mania, I shall relate a circumstance in which I was one of the actors. Not two months since, I was on the platform at the station where the branch from Arthabaska to Three Rivers leaves the Grand Trunk, when two young men, dressed in the American fashion, came to the hotel. One, as he came in, called out in a loud voice, "Where is the ostler?" The man, who was a stout Canadian, soon made his appearance, and as soon as he set eyes

SECTION 133, LANGUAGE RIGHTS

on the gentleman, called out in his turn, "What! Joe, is it you?" (*Tiens! c'est toi, Joh!*)

Of course our pretended American was taken aback, and for the moment dumbfounded. Seeing his embarrassment, and willing, in pity to the poor victim of affectation, to relieve him from it, although it had its comic side, I called to the stableman and said, "Go and take the gentlemen's horses; don't you see they are Americans, and that they don't understand you." Well, Mr. Speaker, such scenes frequently occur; nay, those who move now and then from home may see them every day.

So if we do not wish our beautiful language to lose its influence, we must not fail to discountenance the affectation of Canadians talking English when they hardly know a word of it. Otherwise we must take to talking English, and let our own language

- (p. 951)

sink into disuse and oblivion. For our I religion I have no fears. The experience of the past is a guarantee for the future. We live no longer in those times when Paradise was the promised reward of all who ill-treated those of a religion different from their own. These are not the days in which wars and troubles between nations were begotten of religious hatred. The world is too civilized to renew the scenes which were then constantly exhibited. Every man is free to practise his religion as he pleases, and this tolerant spirit is especially to be noted as characterising the English nation.

True, we find some fanatics both among the English and the French population: unfortunately we had two instances of the working of this spirit in one evening in this House—the one from a Catholic, the other from a Protestant. The former cried out loudly that Confederation would be a mortal blow to the Catholic religion, while the other cried as loudly that it would be the ruin of the Protestants.

I must confess, Mr. Speaker, that I am not one of those who live in fear and distrust of British domination. As long as we live under the sway of free England, I have not the least doubt that our language will be fully protected, and that in fifty years from this present time, good Catholics will be allowed the exercise of their religion as freely, as safely and as piously as this day, and that the wicked will not be compelled to be more religious than they now are.

-----o0o-----

PART 4:

Post-Confederation Debates & Statutes on Language Rights

-----o0o-----

Key for Special Joint Committee Entries

	Liberal Party
	New Democratic Party
	Progressive Conservatives
	Witnesses

October 7, 1980, Debate in the House of Commons, p. 3342 (click [HERE](#))

-----o0o-----

October 9, 1980, Debate in the House of Commons, p. 3570 (click [HERE](#))

-----o0o-----

October 15, 1980, Debate in the House of Commons, p. 3700 (click [HERE](#))

-----o0o-----

October 20, 1980, Debate in the House of Commons, p. 3851 (click [HERE](#))

-----o0o-----

October 22, 1980, Debate in the House of Commons, p. 3945 & 3955 (click [HERE](#))

-----o0o-----

October 23, 1980, Debate in the House of Commons, p. 4013 (click [HERE](#))

SECTION 133, LANGUAGE RIGHTS

-----o0o-----

November 7, 1980: **Lorne Nystrom** & **Jean Chretien**, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 2, then scroll to p. 26)

Mr. Nystrom: Thank you very much, Mr. Chairman. I would like to ask a number of questions of the Minister of Justice today. I want to commence by asking him a question that goes very very much to the core of Liberal Party principles and what the Liberal Party has stood for for many years in our country and also to what I think was one of the major trade-offs initiated by the Liberal Party in the recent constitution negotiations, and that is the extension of language rights to people in our country, which I know the minister feels very, very deeply about.

I notice in the resolution before us that Section 133 of the BNA Act will still apply to the Province of Quebec and that Section 23 of the Manitoba Act, 1870, will apply to Manitoba, and which provides for Manitobans similar things that are provided for Quebec, which is mainly the protection in Quebec of the rights of Anglophones in the courts and in the legislature, which in effect makes Quebec an institutionally bilingual province, The same thing applies in the Province of Manitoba. I would like to ask the Minister why, in view of the deep-rooted principles of the Liberal Party on linguistic equality, did he not apply the same principles that are in Section 133 of the BNA Act to the provinces of New Brunswick and Ontario where are situated the two largest Francophone minorities anywhere in this country outside of the Province of Quebec?

[Page 27]

Mr. Chrétien: At no point during the long debate on the constitution in Canada has the federal government proposed to impose Section 133 on any provinces, Any provinces that wanted to bind themselves are welcome to do so. I have to tell you that I am personally disappointed that there are not many provinces today that want to do that. In 1971 there were seven provinces that were willing to bind themselves by Section 133, and now we are down to the two, Quebec and Manitoba, who are obligated by the constitutional text, and the province of New Brunswick is still willing to bind itself. In 1971 there were seven provinces that said at the conference at Victoria that they were willing to bind themselves. Now we are down, on a voluntary basis, only to New Brunswick. I am disappointed by that fact. But neither in 1971 nor in Bill C-60 have we tried to force, but we always talk about offering it as a possibility to the province to bind themselves.

Mr. Nystrom: In other words, you are confirming that you made a deal with Mr. Davis because. . .

Mr. Chrétien: No, I have to tell you that

Mr. Nystrom: . . . if I can finish, Section 133 applies to the Province of Quebec and it applies in effect to Manitoba. Premier Hatfield would like to apply to New Brunswick but Mr. Davis has said no to the Province of Ontario, and there are many other things in your charter that are binding on the provinces, such as language rights when it pertain to education, the charter of rights. Now why,

SECTION 133, LANGUAGE RIGHTS

because of the principles of the Liberal Party, and why, because of the stand of the party over the years? I can go, Mr. Chairman, back to the B and B Commission in 1967 and look on page 135 of the recommendations, and the recommendation was made there, in effect, that this should be done. You can go on to the Victoria Charter, and you referred to the Victoria Charter, in Part II on language rights, again the same kind of commitment was made.

Mr. Chrétien: Can I explain? I just say that we never tried to impose it on the provinces, but we always expressed the view that we have a strong desire that the provinces will bind themselves, You can ask me why we have not imposed it on them. We could have. We decided that at this time we were not to impose it on any provinces, but in the constitutional text as it is existing now it will be possible now for any province who wants to bind itself to have a constitutional amendment that will be bilateral between the federal government and the province who wants to bind itself to be bound by Section 133. I am told that Mr. Hatfield is just ready to do that and I am telling you that at one time we were quite optimistic about the possibility of Ontario to bind itself, but sometime during the summer they decided not to.

But I have to repeat that we have not told any provinces that We were going to force that on them, neither Saskatchewan, neither Nova Scotia, neither P.E.I. We could have, but we decided that it was not proper at this time to do so.

[Page 28]

Mr. Nystrom: I am interested in finding out, though, why you have that decision because there are a number of other things in that charter that are binding. You made that decision. For example, language rights are binding on the provinces; you made that decision. Why, when it came to Section 133 did you make the opposite decision? In view of the history of the Liberal Party and all the recommendations going back to Pepin-Robarts. back to Bill C-60—one can quote what you are saying in Bill C-60—why that exception? Here are the two biggest Francophone minorities in the country.

Mr. Chrétien: I am telling you that we did not want to impose it on the provinces. If you want to impose it on Saskatchewan, make a motion right away and that is up to the committee. You are asking me as the government why, and I am telling you that in 1971 seven provinces were willing to bind themselves, and we were very pleased. It is one of the reasons why we say that it is time to get ahead with this project, because in the last 10 years we have lost the political will of 10 provinces to bind themselves in Section 133,

Now there is only, voluntarily, New Brunswick who wants to do that. The rest of the provinces . . . I do not remember the names of them. I think Manitoba at that time was not clear because of the problem in the court, but they were willing to bind themselves, whatever it was, the obligation in the constitution. I guess that there was New Brunswick, Ontario, Nova Scotia, P.E.I. and Newfoundland . . . and it was seven. Now we are down to only New Brunswick who wants to do that. Since that time the courts have clarified the situation of Manitoba and they are bound constitutionally because of what was decided in 1867.

Mr. Nystrom: All I am talking about here, of course, are the four provinces, New Brunswick, Ontario, Quebec and Manitoba. In answer to the challenge by the minister, we intend to move an amendment later on to have Section 133 apply to those four provinces. My question to him is: why

SECTION 133, LANGUAGE RIGHTS

has he not done that? The minister says that it was never part of the deal, but I want to say to you, Mr. Chairman, that I have here with me a copy of the memorandum that was studied by the First Ministers in September, document no. 800-14058. It is the copy of the legal text concerning the issues of the charter of rights, equalization and offshore resources. In this text, on page 5, when it comes to language rights, this is what the federal government was saying:

The statutes, records and journals of the legislatures of Ontario, Quebec, New Brunswick and Manitoba shall be printed and published in English and French.

When we look over on page 6 we find, again, where it deals with the proceedings in the courts, 21.2:

Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court in Ontario, Quebec, New Brunswick or Manitoba.

[Page 29]

This was always part of the negotiating over the summer. I have checked with some of the people involved in the negotiations on the side of the provinces and they confirm the same thing; this was always there. All of a sudden it was withdrawn. Now why was this withdrawn but other things that are binding on the provinces not withdrawn?

Mr. Chrétien: I am telling you that we tried to persuade as many provinces as possible to bind themselves by Section 133, and we were quite optimistic. We knew, and we still know, that New Brunswick was willing to bind itself, so we were called upon to prepare a text in preparation for that. We were not sure that Ontario was willing or not willing. We always said in the debate that we were not to force it on anybody. But we had some indication, and it is still the case with New Brunswick, that they are willing to bind themselves.

In the course of the summer the Ontario government said that they were not interested. Of course, we know that the rest of the governments who were interested in 1971 are no longer interested, or are, I do not know, but they have not given us an indication during the summer.

Mr. Nystrom: Are you not playing politics with Mr. Davis?

Mr. Chrétien: No, I am not. Tell me why in 1971 P.E.I. was willing but they are no longer willing. Tell me why Nova Scotia was willing in 1971 but they are no longer willing. I did not question their motivation. The same thing with Newfoundland. We had indications from them that they were no longer willing. The same thing from Saskatchewan, I guess, that they were no longer willing.

During the summer we talked. Ontario had not given any indication that they were not willing. So we prepared texts to be ready, but I want to make the point very clearly that at no point did we want to force all the provinces or a number of provinces on section 133. If it is the view of the committee that we should bind everybody on Section 133, we can vote on it, but that was not the view of the government, that we should impose that on all the provinces.

Mr. Nystrom: Okay, I take the minister at his word then, and he has made very clear that he does not want to force the impact of Section 133 on any province. Now if he means that, let us just turn

SECTION 133, LANGUAGE RIGHTS

this around. Supposing Quebec wants to be taken out of Section 133, and they make that request to the federal government, will he accede to that request? Or if Manitoba wants to be removed from the strictures of the Manitoba Act, will he accede to that request? He says, and I quote him: "I do not want to force this section on anyone in any province." If he is being that generous with Ontario, will he do the same thing for Quebec and the same thing for Manitoba?

Mr. Chrétien: There is a difference between what I call acquired rights and new rights. These rights were established in the constitution long ago. They have, by historical reasons, kind of disappeared in Manitoba along the road, but they were in the constitution long before today. I think that it is a principle in law that before you take away acquired rights you have to be very careful, and they are rights that have been

[Page 30]

acquired in Quebec and in Manitoba. I do not want to go back on that. Now we have one more province that wants to bind itself by Section 133, it is New Brunswick, and I applaud them and I hope that there will be many more provinces. It is not the view of the government that we should force the provinces. If it is the view of this committee, I would like to know.

Mr. Nystrom: In other words, the answer to Manitoba and Quebec would be no.

Mr. Chrétien: No, I do not want to take those acquired rights from the people who have them.

Mr. Nystrom: But at the same time you are going to take some rights away from the provinces over some jurisdiction they have today and put it in the hands of the federal government.

Mr. Chrétien: Where?

Mr. Nystrom: Where? For example in proposed Section 23 when you talk about language rights as it affects minorities. I am not disagreeing necessarily with that section, but you are talking about taking a power that provinces now have and placing it, in this case, in the courts to determine where numbers warrant.

Mr. Chrétien: We have tried in that not to acquire any right for the federal government, and we have given the rights in the education field to the citizens of Canada. We have done it. You can accuse me that we did not go far enough in not imposing Section 133 on Ontario and New Brunswick, I will take that criticism. If the committee wants us to impose Section 133 on all the provinces or a number of provinces, personally I would not be embarrassed. I just say that the government said that there was that much we could do at that time.

Mr. Nystrom: The position of our party is that it should apply to the four provinces where the minorities exist in the greatest numbers.

Mr. Chrétien: You are from Saskatchewan. Why do you not want it to apply to Saskatchewan?

Mr. Nystrom: It should apply, to the provinces where the minorities exist in the greatest numbers.

Mr. Chrétien: If it is a right for every citizen, why can it not apply to your province?

SECTION 133, LANGUAGE RIGHTS

Mr. Nystrom: I have already responded.

Mr. Chrétien: There is no problem if there is no French.

Mr. Nystrom: I have already said that we think it should apply to the provinces where you have the greatest number of minorities.

[...]

Mr. Chrétien: I do not know. If you want to look at all of the possibilities we can argue about hypothetical questions ad nauseum. I just say that it is not one of the considerations of the problem I have in front of me.

By the way, because you asked a lot of questions on Section 133, I would like to inform you that the list that was presented to the first ministers on the Friday when all of the first ministers met with Mr. Trudeau at 24 Sussex had been prepared by the Quebec government, and Section 133 had been dropped by the Quebec government from that list.

Mr. Nystrom: I am referring, Mr. Chairman, to the documents provided to the first ministers at the conference here between September 8 and September 12.

Mr. Chrétien: I just want to clarify that about the list presented on behalf of all the provinces, including the Province of Quebec. The First list we were aware of had Section 133, and when that Friday came Mr. Levesque had dropped Section 133 for Ontario and New Brunswick.

Bryce Mackasey & Jean Chretien, p. 33

Mr. Mackasey: Mr. Chairman, I am looking at the clock, and having an engagement, and one I think the members would

[Page 34]

appreciate, to honour Therese Casgrain as the lady of the evening, an invitation I accepted some time ago and cannot break, I have been weighing the possibility of perhaps passing until Wednesday until I heard Mr. Nystrom's eloquent plea for the extension of Section 133 of the constitution to four provinces. Mr. Nystrom talked very eloquently about the existence of French-Canadian minorities in this country, But sometimes—if I may say this, and I know that people will not misunderstand my words—if there is anybody forgotten in this debate, and this debate has been going on for some time, it has been another sizeable minority known as the English-speaking Quebecers of this country, people who with few exceptions are very basic people, who work on the railways, or work in the north, or work by the hour, who clean streets like anybody else, and whose history, if you look at it very carefully, has been a positive one in that province. I must remind members who think otherwise that the doors of the business community that were closed on French-speaking Canadians on St. James Street were also closed to Verdun Irishmen or the St. Louis Jewish community.

SECTION 133, LANGUAGE RIGHTS

Prejudice is not something that is limited to language or anything else. I have to make that point because somehow in my concern for this issue over the last few years too many academics, too many intellectuals—and I am excluding politicians for the moment—have found a very facile, easy solution to our problem, that Quebec become totally unilingually French and the rest of Canada become totally unilingually English, and somehow all the problems will disappear, according to the academics of the greater Toronto area. I can assure you that when this happens you will have separation, when you have two sizable groups in this country ceasing to communicate spontaneously, as we do. It is important and imperative that the French language be given total opportunity of expanding and being recognized as an official language, not only in Quebec but across this country. This is why I welcome the unselfish attitude of Premier Hatfield in New Brunswick who understands that New Brunswick, despite its obvious limitations geographically and economically, is vibrant because it has somehow been able to meld these two great cultures. And that has been the experience in Quebec for as long as I lived there, which was a long time. One of the tragedies in recent years is that somehow in order to redress what were legitimate complaints in that province, complaints which I suggest did not flow from the educational system but from the business community, the insensitivity of multinationals and insensitivity of Canadian corporations, insensitivity that was reflected for instance in actual forbidding of the French language to be spoken in the workplace. These things have been rectified, thank goodness, and it makes Quebec a better place.

I must remind Mr. Nystrom and others that if it were not for Section 133 the right of English-speaking Canadians who reside in Quebec to be heard in the court of Quebec in their own language would be something waived and disappeared as a result of certain provisions of Bill 101. So the retention of Section 133 in Quebec is imperative if the minorities in that province are to survive.

[Page 35]

Now having said this, the old adage that two wrongs do not make a right is very important here. If it is important that the community of English-speaking Quebecers survive, it is obviously important that Section 133 of the British North America Act continue to apply to a minority that in numbers are equal or greater than most of the Atlantic provinces. The English-speaking community in Quebec is not a small community, but it is wrong to think they are all millionaires, all living in Westmount and that they all can do things. I can assure you that is not true. I happened to say, and continue to repeat, that the relationship between the English and French in Quebec should be an example to all of Canada, and the constitutional changes that we propose should make it possible for that *joie de vivre*, that relationship, that intercommunication between the English and French in Quebec to have an opportunity to flourish across Canada.

You are not going to get a sizeable French minority, Mr. Nystrom, in Saskatchewan, if you are unwilling to extend to that province the type of provisions and protection that the minorities should have resulting from section 133.

I would reserve, Mr. Minister, my hard questions for Wednesday. I would like to know your philosophy on freedom of choice in the field of education. I would like to know your personal feeling on the extension of section 133 across Canada. I would like to know answers to a lot of hard questions on why things are not in the charter that should be. I think I know the answer. I approved of the resolution or I would not be on the committee. Well, this is true; this is exactly what committees are about, to inform the public, not to score points with the opposition, but through

SECTION 133, LANGUAGE RIGHTS

proper questioning give the minister a chance, at this stage at least, to elucidate and enunciate the philosophy behind the bill, and I suspect it is not to impose on the provinces anything, but to do the barest minimum in the hope for some enlightenment on behalf of some of the premiers of those provinces, who act as if they have a mandate which they do not have, to understand the need, if this country is going to survive, to extend the reality of the two founding groups right across Canada. Thank you, Mr. Chairman.

Mr. Chrétien: I do not know if I should comment, but as Mr. Mackasey has mentioned the minority problem in Quebec, perhaps I can inform the committee that in 1963, in my first election, I could not say a word of English. I had a meeting for the English in Grand'Mère and Mr. Mackasey came as the guest speaker and he managed to get some solid Tories to vote for me.

Mr. Mackasey: And do not forget that.

Mr. Chrétien: I will never forget that, Bryce. But you know, I made the only promise I ever made in my political campaign. I said that if you vote for me and I am elected, I will be bilingual. I still have a problem with my accent, but it is coming along.

Jean Lapierre, p. 40

Mr. Lapierre: Like my colleagues, I wish to welcome you, Mr. Minister. I really appreciated Mr. Nystrom's magnanimity with respect to Section 133 of the BNA of 1867. I can only regret that his magnanimity does not encompass all provinces. What is good for others should be good for oneself. I would be very pleased to second a motion which would have Section 133 apply to all provinces.

David Crombie, Jean Chretien, & Senator Tremblay, p. 43

Mr. Crombie: [...] My first question to you is, since your proposed sections 18(2), (3) and (4) of September were cut out and only section 18(1) was maintained in the current resolution, therefore removing the Province of Ontario and the Province of New Brunswick from the application of Section 133, do you now regard this resolution as delivering, to the minorities in those four provinces, equality?

Mr. Chrétien: I said earlier that the ideal situation will have to have a very symmetrical system, as mentioned by Mr. Lapierre a minute ago when he offered to second Mr. Nystrom's motion. If you want to bind every province, that will be the ideal situation. Of course, in the real world it is never ideal, and we were very disappointed that after 1971 there was a dwindling of the willingness of the provinces to bind themselves by Section 133.

In looking for the root of the problem, we felt very strongly that the most acute problem is always education. When you cannot send your kids to your mother language schools, official language schools, it is very difficult, especially today with TV and so on, for French-speaking families outside of Quebec to keep the language in the family. So personally I felt education was extremely important, and a lot of the problems we have today exist because it was not guaranteed in the constitution for all of Canada in the past. Of course, when there is no French there is no problem; it is only for the francophone, so if there is none there is no problem, or virtually no problem.

SECTION 133, LANGUAGE RIGHTS

I personally wish Section 133 would bind everybody. I was working during the summer to have at least four provinces. In 1971, only Quebec felt bound by Section 133. The court confirmed Manitoba later on. Very happily, Mr. Hatfield had been very positive on that, and I congratulate him because he always wanted to have it binding New Brunswick. Now he will be able to bind himself with the present amendments, and he says he will.

I was disappointed in the summer that Ontario was not ready. They say they are not ready. There was discussion that with five years delay or ten years delay they might or they might not; but eventually they said no, we are not interested at this time. With the other provinces, my private conversations led me to believe that if I asked I would not receive an enthusiastic response. So you go right to the heart of a province, the legislature and so on and I felt a bit uncomfortable imposing.

If the committee wants to impose I will have to call those people and tell them that the Parliament of Canada

[Page 44]

will represent us—in the words of Mr. Clark, “we”. He said in his speech on June 7 that we are the only people who represent all of Canada, by the nature of our function. If we want to express that view and live with the consequences. I will not be the one who will object.

Senator Tremblay: I would like to ask a supplementary, if I may, as a matter of information. You have referred to the so-called Charter of Victoria two or three times, I am not too sure that a reading of the history of that charter is correct, the way you are making it. Have your officials got the text of the charter?

Mr. Chrétien: You do not trust my officials. The way I understand it is that there were seven provinces which had indicated the time that they were to bind themselves, but I will give it to Mr. Strayer who' is from western Canada.

Senator Tremblay: My question is this. In the Victoria Charter there was an opting-in formula, an opting-in possibility, and it was left to the provinces to decide if they would opt in, so when you say that seven provinces were ready at that time, that was just expectations about the way provinces would opt in, it was not a fact.

Mr. Chrétien: I agree with you because Victoria was never accepted. At the conference all the premiers who were there expressed their views, and seven of them—Quebec had no choice, they were already caught in Section 133—we were willing to present to our assembly. Mr. Bourassa came back and decided not to go along with Victoria so nobody had to proceed with it, but when the first ministers at that conference said to each other that they were willing to go along with it and will present it in front of the House, there is always the risk. Legally speaking, there was nothing legal there. That was a commitment by the governments to bind themselves, but they never proceeded with it because 10 days after Victoria Mr. Bourassa said no more deals, so the whole thing died. But I recognize to you that the seven were opting in.

Senator Tremblay: Yes. Okay, go on.

SECTION 133, LANGUAGE RIGHTS

The Joint Chairman (Senator Hays): We are using your time, Mr. Crombie.

Mr. Crombie: Well, I did not notice, Mr. Chairman. May I continue with the question?

The Joint Chairman (Senator Hays): Oh, yes.

Mr. Crombie: Mr. Chairman, thank you and let us be generous. Mr. Minister, I take it the answer is that equality does not exist but there are historical circumstances and you would like to try harder. Is that your answer?

Mr. Chrétien: Yes.

Mr. Crombie: Thank you, By the way, one small reference. On two occasions now you have indicated that the Government of the Province of Quebec did not support the four provinces being controlled by Section 133. Document No. 814-085 includes the four provinces, so that is the Quebec delegation from the summer, just as a matter of historical interest.

[Page 45]

Mr. Chrétien: I just want to say that the document was scratched come the Friday morning.

Mr. Crombie: Apparently there were a lot of things scratched, section 18 (2), (3) and (4) among them.

Senator Lamontagne & Jean Chretien, p. 48

Senator Lamontagne: This is my second question: Is it not true that draft resolution 43 as drafted is in fact an option formula which would allow the provinces to adhere voluntarily to clause 133 in the constitution?

Mr. Chrétien: Absolutely! You are quite right, Mr. Senator. Any province could amend the constitution for its own purposes according to clause 43 of the draft resolution. Take New Brunswick, for example. . . A simple resolution before the Legislative Assembly, a similar resolution here in Ottawa, this is all it would take to make article 133 binding for New Brunswick. Same thing for Ontario. This is exactly what I was talking about with the Government of Ontario during the lunch hour. . . And the Government of Ontario assures me that its position is not final because this is the way they want to go. I think there is a committee of their Legislative Assembly which tabled recently a very positive report on this subject. There are still some problems regarding the timetable, enforcement, personnel, and so on. In any case, if the Committee has anything to say, we will listen. But I must say, and it is to the credit of the Province of Ontario, that it is not adverse to the idea of binding itself to clause 133. It is a matter of time, a matter, perhaps, of complex political stance, I do not know.

-----o0o-----

November 12, 1980: Eymard Corbin, Jean Chretien, & Senator Asselin, speaking in the Special Joint Committee of the Senate and House of Commons on the

SECTION 133, LANGUAGE RIGHTS

Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 3, then scroll to p. 15)

Mr. Corbin: [...] I would first like to make a comment. I am obviously very pleased to see that we are enshrining the official languages in the rights of the education of minorities in this charter of rights.

I think this is an important step that is quite welcome by the minorities, by the French minorities wherever they live in Canada.

However, I notice that strictly speaking of rights we are still making a distinction related to numbers and regions for the implementation of this right and of the Official Languages Act.

The charter, where it concerns official languages in Canada, applies on a regional basis. However, the honourable minister will certainly agree, Mr. Chairman, that the government and, in effect, Parliament, have not yet established bilingual districts in Canada under the Official Languages Act although they have been defined after a fashion for the purposes of the federal Public Service.

I feel that the charter is quite incomplete in that sense and that there are gaping holes which concern me.

Also, I would like to say that I consider the entrenchment of official languages and of the language of education in the charter not like breaking the sound barrier but rather like the first time man walked on the moon. I feel that there is yet a lot of ground to be covered before we even break the sound barrier as far as legislation regarding the integral application of the principle regarding the use of official languages in Canada.

What concerns me above all is that the related sections appear to be drafted according to what those politicians known as provincial premiers are ready to accept or to reject. The Prime Minister of this country has stated on many occasions that there must be no tradeoff between rights and oil supplies. However, I get the impression that there has, in fact, been some horse trading going on which means that this document is quite incomplete in my opinion.

So if there has been praise around this table of the determination of some provincial premiers to follow the intention of the federal Parliament in the area of official languages and language of education, I feel it is rather a question of having no other choice. Whether the premiers desire it personally or not, they have no choice. They must move in that direction because minorities within their provinces are strong and able enough to leave no options open to the premiers where official languages are concerned.

Perhaps you can call it courage; I say that some provinces have no choice. However, it also appears that some premiers have no other choice but to reject the principle of equality of both official languages and of language of education in their

[Page 17]

SECTION 133, LANGUAGE RIGHTS

province because the majority groups are applying too much pressure. I regret that fundamental questions have been traded off against political considerations. On many occasions, I have heard it said in the House of Commons as well as on television that the entrenchment of these rights in the Constitution would avoid this bartering, this negotiation, this bilateral accommodation that takes place between the provinces, between Quebec and the other Canadian provinces.

So, I do not think that we have reached our objective and, before going any further, I would be happy to hear the minister's comments on the subject.

Mr. Chrétien: Your statement is twofold, Mr. Corbin.

First, you have raised the question of education in the mother tongue. Obviously, this was the imperative question for me and one which had to be solved by the ongoing constitutional reform process. As far as language rights are concerned, I feel that we have attempted, through this formula, to give equal education rights to Francophones living outside Quebec, to give them the opportunity to receive their education in French and to give equivalent rights to the English-speaking minority living in Quebec. We wanted to draft a provision which gave equality both outside and inside the province of Quebec.

You have referred to the number of children which is sufficient to warrant minority language educational facilities. That criterion was used by the premiers themselves at the time of the 1977 agreement in New Brunswick as well as in 1978.

Whatever the case may be, this criterion would have been upheld in the courts because they would have had to apply some sort of reasonable standard when making their decision for very practical reasons. It cannot reasonably be expected that one family in a village should warrant one school so that their children may receive instruction in the language of their choice at prohibitive costs. With this mechanism, Mr. Corbin, the courts will be able to interpret the situation in English Canada based on the situation in Quebec. The more generous Quebec is towards its anglophone minority, the more often the courts will be able to use the Quebec precedent to impose criteria on French speaking minority groups elsewhere in Canada.

To turn to the question of education, I believe the second part of your question was related to I33. I have stated and I repeat that neither in 1971 nor at the time Bill C-60 was published was it ever the intention of the Canadian government to impose institutional bilingualism in the provinces.

In 1971, seven provinces were ready to bind themselves to 133 through an "opting in" mechanism. Now, obviously Quebec and Manitoba are bound by the constitution and the Province of New Brunswick is ready to do the same. Ontario has indicated that it was not ready to commit itself at the moment but that it might be in the future. Under the constitution as it would exist, it would be possible for a province at any

[Page 18]

time to bind itself through a joint resolution approved in both legislatures or by both governments. Once it is written in the constitution, it could only be amended through the amending formula.

The Joint Chairman (Mr. Joyal): Mr. Corbin.

SECTION 133, LANGUAGE RIGHTS

Mr. Corbin: Mr. Minister, Mr. Chairman, I am happy to hear the minister say that he believes the courts will interpret “in which the number is sufficient” or the word “reasonable” based on the treatment which English speaking minorities are given in Quebec. That is what the minister has said, is it not?

Mr. Chrétien: Yes. If I was defending the francophones outside Quebec, I would call that province as my first witness so that the bench could hear how English speaking minorities in Quebec are being treated.

The Joint Chairman (Mr. Joyal): Mr. Corbin.

Mr. Corbin: The text of the resolution will remain unchanged.

Senator Asselin: Yes, but people have to wait before the courts can interpret the provision.

Mr. Chrétien: We must have confidence in the courts. Having confidence in the provinces has not proved very satisfactory over time.

Mr. Corbin: Obviously, we have to trust the courts, Mr. Chairman. Otherwise this exercise would be fruitless since all hopes founded in law are eventually left to interpretation before the courts. In any case, I am a little more encouraged by the minister’s remarks than I was when we began consideration of the resolution. However, it appears to me that there is no backbone in this country. There does not seem to be enough determination on the part of the provincial premiers to recognize that we must recognize and grant, in the text of this charter, the same rights which anglophones have in Quebec at the present time. Frankly, I must admit that this obviously political game escapes me totally. I know that politics is the art of the possible, I know that as far as possible there was a desire to respect the texts which were adopted in 1971 and that the federal government did not want to give itself more rights than it has at the moment or take any away from the provinces. However, in my opinion it is an opportunity missed. The amendment of the constitutional provisions has not requested the provinces to take a more affirmative, a more positive stance. The minister may tell me that this is beyond his jurisdiction, but I have, nonetheless, to express my regret.

Mr. Chrétien: Obviously, Mr. Corbin, it is refreshing to hear that we have not been bold enough. Many have told us that we have gone too far.

Senator Asselin & Jean Chretien & Bryce Mackasey, p. 54

Senator Asselin: In my mind it does impose limits upon certain rights which now belong exclusively to the provinces if we refer, such as many members of the committee did this afternoon, to clause 23 on the right to education in the language of the minority, which means that through a federal

[Page 55]

SECTION 133, LANGUAGE RIGHTS

law you are amending a provincial law which is already in existence, known as law 101 and you are intervening in an area which is really exclusive domain of the provinces without even asking for the consent of that province.

By so doing, you are creating discrimination between two classes of immigrants. The Italian immigrant will be treated differently than the Pakistani or Australian immigrant.

By virtue of clause 23, it is the intention of your government and yourself to bring in amendments to avoid discrimination by creating different classes of immigrants?

Mr. Chrétien: First of all, we have not changed the balance of power in matters of education. Education remains a provincial responsibility.

Senator Asselin: So you really put your nose in it thanks to clause 23.

Mr. Chrétien: No, no. We are only enshrining in the Constitution the proposal made by Mr. Levesque and accepted by all provincial premiers during the St. Andrews conference in 1977 and the Montreal conference in 1978.

Senator Asselin: Is is not true, Mr. Chretien . . .

Mr. Chrétien: It is exactly the same text.

Senator Asselin: Is it not true that you are amending law 101 indirectly, while you could have done so through the powers . . . ‘

Mr. Chrétien: We are giving French-speaking Canadians outside of Quebec the same rights that the English-speaking Quebecers are said to have presently. And during this summer’s conference, how many times have I heard Quebec representatives say that they hoped the English provinces would do for francophones what they were doing for anglophones in Quebec and that is exactly what we are putting into the Constitution at this point.

Senator Asselin: What are the rights of the French minorities you are protecting? Is there anything being said for French minorities, say in Ontario, where there are 600,000 French Canadians and where your law does not apply, where you do not even apply or try to have applied Clause 133. I do not know why the representative from New Brunswick, Mr. Corbin, has let it be understood that there was negotiation of certain rights, I do not know. Anyway, the Acadians in New Brunswick as well as the French Canadians in Ontario are not at all affected by that law.

Mr. Chrétien: I am sorry.

You are neglecting two aspects of this problem. First, the question of education. You spoke about education before and I answered that question.

Now, if you want me to pick up the question of 133, I will repeat what I have already told the committee. That is, that neither in 1971 nor in 1978 the federal government intended to impose 133 to the provinces. 133 now binds Quebec and Manitoba, it has been in the Constitution since 1867 and we invited the provinces, in 1971, to opt in for 133 either in part or in whole.

SECTION 133, LANGUAGE RIGHTS

[Page 56]

Senator Asselin: With your permission, I will interrupt you for a moment. if 133 applies neither in Ontario nor in New Brunswick if Quebec wanted to get rid of 133, would you allow Quebec to withdraw from 133?

Mr. Chrétien: I have already stated that vested rights should not be withdrawn from Canadian citizens and that two wrongs do not make a right, I believe that the present climate gives us the opportunity, and it is the Premier of New Brunswick who said so, thanks to the amending formula in this Constitution, at this moment while I am speaking to you, in the future the federal government and a province will be able to opt in and Mr. Hatfield has already said he would do so.

As for Ontario...

Senator Asselin: Why have you not done that with . . .

Mr. Chrétien: No, no. It is optional. It has always been optional.

Senator Asselin: It is not optional for Quebec nor for Manitoba.

Mr. Chrétien: The Fathers of Confederation bound Canada, in 1867, as well as Quebec and Manitoba and we hope . . .

Senator Asselin: And Ontario?

Mr. Chrétien: We hope that all parts of Canada will want to opt in. If you want to make a proposal to the committee I think that Mr. Crombie and Mr. Nystrom have already said something about that.

We have maintained, in all circumstances, that we did not have the intention of forcing the provinces. If the committee wants to take a different direction, I will report to Cabinet. What really surprises me at this point is that everyone was reproaching me my timidity, because, not that long ago, it was being said that it was a Machiavellian document which would impose the federal views on everyone and right now you would want us to force 133 on Ontario, New Brunswick, Saskatchewan, British Columbia.

Senator Asselin: But mainly upon Ontario and New Brunswick, Mr. Minister.

Mr. Chrétien: But why not upon all the others?

Senator Asselin: When you know that there are 600,000 French Canadians in Ontario who have been fighting for almost 100 years to have their educational rights recognized and that the federal government . . .

Mr. Chrétien: No, no. . .

SECTION 133, LANGUAGE RIGHTS

Senator Asselin: The federal government in revising its Bill of Rights and its rights to education in the language of the minority says it is not worth it . . . You have set aside involving Ontario under Clause 133 . . .

Mr. Chrétien: Yes, but you are not making a distinction between . . .

Senator Asselin: I am sorry . . .

[Page 57]

Mr. Chrétien: You are not making that distinction. You have been speaking about education. Education is protected under Clause 23. Clause 133 has nothing to do with education.

Senator Asselin: Listen . . .

Mr. Chrétien: You have just said something about education. I say to you that Clause 23 will give the French minority in Ontario constitutional rights to education in the French language and to all French-speaking people outside Quebec. and the same rights will be given to English-speaking people in Quebec. That is what education is all about, that is Clause 23.

Senator Asselin: English-speaking people have long had that right in Quebec. There is no problem for them.

Mr. Chrétien: Do not start mixing up 133 and education. Clause 133 is institutional bilingualism. It has nothing to do with education. It is the right one has to make a speech in French in the Legislative Assembly of all provinces. the translation of statutes. and also the use of bilingualism in the institutions. It has nothing to do with education. So do not start getting them both mixed up. Francophone battles for education will be constitutionally solved with Clause 23.

Senator Asselin: Well, then, I will make good note of that...

[...]

Mr. Mackasey: Mr. Chairman, I think I am back in good grace here. In any event, Mr. Chairman, prior to the dinner hour, the member representing the New Democratic Party, Mr. Robinson, spoke very eloquently and persuasively on the rights of individuals and minority rights in this country. I was quite impressed because the honourable member has a legitimate reputation. based upon his speeches in the House and his activities across this country, as being sincerely concerned over minority rights.

He raised a matter which concerned me, while I listened to his persuasive arguments, about the possibility (or probability) that a referendum could be used despite all the safeguards and other steps. in some way to take away individual rights which had been enshrined in the constitution. It worried me, and in looking over the constitution, I went to Section 50 to see, if, for instance, this was one of the areas which could not be touched

[Page 58]

SECTION 133, LANGUAGE RIGHTS

by a referendum. It is not. It is one of seven which make it very clear that the referendum procedure, could, in fact, affect Canadian rights and freedoms.

Then, I began to wonder why it was this way, and I suddenly realized that it is much easier to make a legitimate scenario where this procedure, as a last resort, requesting as it does, the support of the majority of Canadians could be used for the opposite purpose. I think it is much more logical that this procedure would be used to enshrine in the constitution the rights of a minority of any particular province, the rights that were being restricted by legitimate provincial legislation. I think this was the thinking of the government (the minister may talk about it in a minute); but I can see the opposite concern to that of the member who spoke earlier today, namely, that this would be a useful instrument, on those rare occasions, when the federal government felt it imperative to enshrine in the constitution minority rights which were clearly being infringed by provincial legislation. Mr. Chairman, this is not a far fetched possibility.

Again, I must talk about my experience in Quebec, not in the Assembly, but in the years I have lived there.

You have quite properly said, Mr. Minister, tonight that you hope that the French speaking minority in other provinces would have the same rights as the English speaking Quebecers. I share that view, and always did.

I would prefer you to say that you wished French speaking Canadians across Canada had the rights and privileges that English speaking Quebecers had five years ago. But there have been subtle changes—quite legitimate provincial legislation. The freedom of choice in the field of education is denied to the majority of Quebecers; not the English: we have freedom of choice; but French speaking Canadians in Quebec no longer have freedom of choice. The rationale, of course, is that any time a majority wants to demand this freedom to be educated in either official language, it has the majority to do so.

But Mr. Minister, many of the rights—and privileges which became rights—of that minority, no longer exist. I know that Senator Asselin shares my view on this.

Mr. Chairman, it is ridiculous that a merchant in the province of Quebec cannot put up a sign in the two official languages of this country, or three or four. That is against the law. Billboards cannot be bilingual. There are many infringements on the rights of the minority in Quebec, for which, ironically, are not restricted to other provinces. This is a legitimate piece of legislation founded on the fear that somehow the minority was, in some way, infringing on the growth of the French language and culture, and God knows we want that language to flourish. That is what makes this country so different from the United States.

[Page 59]

But no matter how legitimate the fear was—or illegitimate—the fact remains that Bill 101 is a legitimate piece of legislation which, carried to its extreme, could very well infringe on the rights of certain minorities in this country, in the case the English speaking Quebecer — and did!

SECTION 133, LANGUAGE RIGHTS

Now, that does not mean to say the rights still remaining in the English speaking Quebecers are far greater than those which exist in other provinces and extended to French speaking Canadians in other provinces.

Now, it is quite appropriate for the Minister to say that two wrongs do not make a right when he was talking about 133, and I have got to repeat what I said Friday, that in the Quebec National Assembly, both languages are official and I might say that I was sworn in in English, as is my right. And I only wish that the degree of tolerance that exists in that Assembly Nationale existed everywhere in this country, and that includes the views of the PQ. Members expressed in the Assembly. But nevertheless, Mr. Chairman. English-speaking Canadians from other provinces coming into Quebec can no longer be educated in English. A privilege or a right we had taken away through provincial legislation, legitimate legislation.

The English language is no longer an official language in Quebec. Your ability, if you are part of the minority, to communicate with the Quebec government in English is no longer a right. Now, I know that it is a delicate subject that I am raising, but I have to raise it because it has perhaps more than anything else strengthened my belief that these fundamental freedoms that all Canadians should have, must be in the constitution. I, as a partisan Liberal, know that Mr. Ryan, when elected, will make it possible for English-speaking Canadians to come into Quebec and continue their education. I know that he is very much on record as saying you will be able as a citizen to communicate with the Quebec government in either of the two official languages. I know he intends to do that, but that again will be provincial legislation, in ten or fifteen years it could be reversed again.

So, Mr. Minister, I do hope that Members here, pointing out quite legitimately the need to enshrine in the constitution sooner or later, preferably sooner, 133 to New Brunswick and Ontario if the numbers are there, and perhaps Members opposite may be, or Mr. Crombie may intend to make such an amendment or motion, I do not know, but I think the time is overdue. There is no doubt in my mind, but I would hope that if it does not occur, that we do not suggest as some people have—and I do not mean by that anyone on the Committee, that 133 be removed from its application to Quebec and Manitoba, because then we would be really turning the clock back and setting up two great linguistic ghettos.

Now, Mr. Minister, I would hope that my interpretation of why you have included in Section 50 the points that could be subject to amendments through a referendum, and I am saying not to restrict freedom, as the Member quite properly pointed out, but rather expand freedom when there is a clear-cut example in existence of discrimination in provincial legislation, and if I mention Quebec as an example, I mention the least

[Page 60]

discriminatory of our provinces, the very least, because the treatment of the English-speaking minority in Quebec has been exemplary by French-speaking Canadians. If the politicians stayed out of the act there would be no friction because, as I mentioned Friday, very few of us are millionaires and very few of us were in a position to discriminate if we wanted to, but nevertheless, I did realize the fragility of freedom if you have to depend for that freedom on provincial legislation, and I realize that if I was concerned about the subject, this would be the proper forum, rather than Quebec, and I can only urge the premiers of Ontario and New Brunswick to realize the importance of extending 133 into those provinces, but I must emphasize, Mr. Minister, before I let

SECTION 133, LANGUAGE RIGHTS

you comment that we are not for a moment entertaining the possibility of restricting 133 to Quebec or Manitoba.

Mr. Chrétien: Thank you, Mr. Mackasey. Of course I said I do not want to turn back the clock, as you described. The rights should be there and we hope that the same rights will eventually be extended to all Canadians.

To go back to the first point you made, of course this amending formula will be used. Mr. Robinson put it in a negative way, the possibility of some rights being taken away from the charter. I explained to him how complex the mechanism is, and it will not be easy. Now, with the Provincial Charter of Rights, it can be done like that.

Now, in the future there will be consultation between the provinces and the national government. There will be the whole process, there will be a year delay after the deadlock and the referendum, but eventually amendments to the Bill of Rights can be made.

Another thing, too, is that it might be with the evolution of rights, some rights eventually can be entrenched in the Constitution that are not now there, and that could be objected to by some provinces, but by that time we could let the people of Canada decide. This Charter of Rights is not perfect, it is a minimum. There are a lot of rights that will evolve in the society, will mature in the society and will be capable of precise definition so as to be in a Charter of Rights, but in the meantime, the evolution of these rights will be measured and brought into Parliament through the Bill of Rights, through the Human Rights Bill that will come outside of the Bill of Rights, because the Human Rights Commission will still be there, will analyze the problems, the evolution of society, the mechanism to protect the rights of some minorities today, that their rights are not quite defined, such as the physically handicapped, and so on. So these things have to mature, to find their place in a Charter of Rights, but in the meantime, the Human Rights Commission will be called upon to follow up the evolution and the drafting and the regulations and so on, that it will be easier in the future. However, you are right, I do not want to turn back the clock, and I said in my own personal view that 133, the more provinces will accept it, the better.

[Page 61]

I am very sad that in 1971, in many aspects of 133, seven provinces were willing to bind themselves, and in the period of ten years we have lost five of them, or four of them, and it is kind of sad, and it might be that if we are not acting at this moment, and I am glad at least New Brunswick is willing to bind itself, I elaborated last week about the situation of Ontario, in the summer they gave us some indication, but after that they felt that they could not do it and they said that they need time. But I hope that, for example, Mr. Nystrom will persuade the Saskatchewan government, who are not rebellious to the idea that institutional bilingualism be adopted partly or totally, and I hope you will put pressure on in that respect.

However, I am kind of sorry, after all the speeches that have been made, that we were just sending it too strongly, that today I find myself on the defensive, that we are not going far enough, and I would like to have the advice of the Committee on those problems.

-----oOo-----

SECTION 133, LANGUAGE RIGHTS

November 13, 1980: Louis Duclos, Jean Chretien, & Lorne Nystrom, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 4, then scroll to p. 20)

In line with the same reasoning, that is the importance of entrenching rights so that provincial legislatures cannot tamper with them, and in keeping with the principle of equality between French and English speakers in Canada, I would like to know why the government did not follow up on its own proposal contained in the document made public on July 4, 1980.

Under this principle of equality, what is good for English speakers in Quebec should be good for French speakers outside of Quebec.

It therefore seems important to me not only to bind Quebec and Manitoba as a result of the Supreme Court's decision of last December, but also to make Section 133 apply to Ontario and New Brunswick.

Mr. Minister, let me point out, in conclusion, that in this document of July 4, you go further when you say, in Section 11.2:

Any person is entitled to take part in the debates of the provincial legislatures in French or in English . . .

This right is extended to all Canadian provinces. I am not asking you to go as far as this, I congratulate you if you do, but I would like to know why the principle of equality remains theoretical and has no practical result in this case. Why is this not possible? I heard you say that you do not want to impose such an obligation on the provinces.

When it is Ontario, you do not want to impose the right to use French, you refuse to entrench in the Constitution the right of French Canadians and English Canadians to use French or English before the courts and in the provincial legislature of Ontario, but when it is Quebec which is in disagreement with the scope of Clause 23 which would require an amendment to Bill 101, then you have no qualms about making such an imposition.

[Page 21]

I would like the Minister to shed some light on these matters. Thank you.

Mr. Chrétien: As far as Clause 23 goes, we have attempted to make the Quebec clause the Canada clause, through reference to the person's mother tongue and we are also seeking to protect, once and for all, the education rights of francophones outside of Quebec.

The aim of this initiative is to provide francophones outside of Quebec with approximately the same rights as the anglophones in Quebec enjoy, or once enjoyed.

SECTION 133, LANGUAGE RIGHTS

I think that the effect of Clause 23 will be much greater on the English provinces than on Quebec since this clause is an almost word-for-word reproduction of Mr. Lévesque's proposal at the New Brunswick conference in 1977 and at the Quebec conference in 1978 when he made his suggestion for reciprocity.

We are simply including this proposal in the Constitution and it does not require much from Quebec. Quebecers boast about the good treatment given to the English minority and, the better the Constitution treats the English minority in Quebec, the better the situation will be for French speakers outside of Quebec who have no constitutional right at the present time. If we were to wait for patriation and then rely on the goodwill of the provincial governments, I think that the protection of French education outside of Quebec would be something (inaudible). It is easy to talk about this in theory but I was involved in practical discussions for three months and it was "strike one, strike two, strike three". So it is certainly better to proceed in this way.

You mentioned immigration and the possibility for Quebec to choose its own immigrants. At the present time, immigration is an area of joint federal-provincial jurisdiction and, as a result, of an agreement between the federal and provincial governments, the provincial government now takes part in the selection of immigrants wanting to settle in Quebec. I think that this system is working quite well. I cannot see why you want to give total control over immigration to the provincial governments. This could have far-reaching consequences for the mobility of Canadians and Canadian citizenship. This matter was not discussed. This is the first time that I have been asked to hand over complete responsibility for immigration to the provincial governments, this is the first time I have heard such a suggestion.

Mr. Duclos: (inaudible).

Mr. Chrétien: That is what you said about entrenching the rights.

Mr. Duclos: I was talking about selection.

This is not the same thing as the admission of immigrants. All you have to do is take the present agreement and include it in the Constitution.

[Page 22]

Mr. Chrétien: It actually amounts to handing over complete control of immigration to the province. I am not saying I am for or against this, just that this is the first time the matter has been raised. I am ready. However this will not settle the problem of Clause 23 as it is perceived in Quebec at the present time. You are saying that there should not be much intervention on our part but that in relation to school boards outside of Quebec, we should decide what type of school boards there should be or make a provision to require the setting up of French school boards under the constitution rather than under provincial legislation. This would mean massive federal interference with education in the English provinces and would probably entail the same type of interference with education in Quebec since we could hardly act one way in the rest of Canada without doing so in Quebec. As for Section 133—I am attempting to answer your four questions as quickly as possible—let me repeat that it was never our intention to impose Section 133. When we prepared the document for this summer, as I already informed the committee, we were under the impression that New Brunswick and Ontario were willing to go along with Section 133. The government

SECTION 133, LANGUAGE RIGHTS

always thought this was an opting in possibility for the provinces since we did not intend to impose the obligation. In Quebec and Manitoba, it is a matter of acquired rights and we want to go forward rather than backwards. New Brunswick is now willing to come under Section 133 and I congratulate it on its decision. I am disappointed in Ontario's refusal, I worked very hard on this during the summer and at one point, I thought Ontario was about to opt in. We eventually prepared our document under the assumption that Ontario would do so since it had raised this possibility. At one time a five year timetable was even mentioned. I was disappointed to hear the refusal at the conference. But I did not want any massive federal intervention in an area of provincial jurisdiction, or at least this was the desire of the government which I represent. Mr. Nystrom said he was ready to make a motion.

If the committee goes along with this point of view, I will advise the government. However the federal government did not make any deal with Mr. Davis or anyone else. We simply suggested...

Some hon. Members: No, no.

Mr. Chrétien: No, we simply suggested, I am being quite frank with you, we simply mentioned our hope that all provinces would accept Section 133.

Only two provinces indicated their interest, New Brunswick and Ontario. There was absolutely no interest from the other provinces, perhaps with the exception of Saskatchewan. When the September conference came, Mr. Davis refused.

It was never our intention to impose this but throughout the summer we thought there was a possibility. New Brunswick is going to opt in.

[Page 23]

Some hon. Members: (inaudible)

Mr. Chrétien: No, no. Under the constitutional amendment, a resolution of the House of Commons along with a resolution of the legislature of New Brunswick would bring Section 133 into effect in this province. The constitution will allow any future opting in by a province. This is now a possibility. New Brunswick is already availing itself of this opportunity and if Mr. Nystrom would like to persuade Mr. Blakeney to join New Brunswick, I would be very pleased.

Personally, I am not willing to impose my wishes on the provinces but if you have more courage than I, please go ahead.

[...]

Mr. Nystrom: The Minister referred to myself and to a possible amendment, and I do not think he tried to mislead the Committee intentionally, he referred to the fact that a deal was not made with Mr. Davis but I have here before me a copy of a leaflet distributed by the Conservative Party for a by-election here in Ottawa and it says, and I quote, in confirming a deal, it says that the Conservative Party has caused the federal government to back away from a blanket bilingual policy in favour of Ontario's existing policy of providing french language services where numbers warrant.

SECTION 133, LANGUAGE RIGHTS

In other words, confirmation of a deal by Mr. Davis that he has made with Mr. Trudeau. I do not think the Minister intentionally tried to mislead the Committee but I thought the Committee would appreciate knowing the facts.

Mr. Chrétien: I think that I would like to clarify that. This statement is untrue because it was never the intention of the national government to impose it, it was always the desire of the federal government that the province of Ontario would accept 133, and this gentleman says that Mr. Davis did not want to bind himself but not through a deal with us because we always left them the freedom of joining or not joining, This is the position I have taken.

I am disappointed that they have not decided to go along with what was a good idea.

Warren Allmand & Jean Chretien, p. 80

Mr. Allmand: Mr. Chairman, and Mr. Minister, this morning I had raised with you some what I consider to be inequities in Section 23 in that it would lead to two classes of Canadian citizens, those who would have the right to opt for minority language education and those who would not simply because their mother language was English and French rather than others. And you discussed with me the political difficulties of that. I did not have time this morning to suggest to you what I believe should be the counter-balance of that measure, where that measure, as you pointed out, may have some difficulty in Quebec because it would override certain provisions of Bill 101.

By the way, I should point out that the educational rights of the Provinces are presently restricted by Section 93 of the Constitution; they are not absolute, they are restricted with respect to religious rights and other rights to intervene on behalf of those minorities which were the most important at the time of the Constitution in 1867.

Well, I accept your argument that it would be difficult but what I was going to suggest if I had had time this morning was that we should also include an amendment in the package of amendments to the proposal which would extend Section 133, the provisions of 133 to Ontario, New Brunswick and to provinces who had achieved at least 5 per cent of their population as a minority language group, which was about what Ontario has today. Ontario has about 7 per cent francophones. I would say that if any province achieved 5 per cent they would automatically opt into the provisions of 133.

[Page 81]

Now, in Bill C-60, in Sections 14(2), 15(2) and 16(2) you have made provision, the government made provision, of which you were a member and I was a member at the time, for the extension of the provisions of 133 to these other provinces, especially to Ontario and New Brunswick, and while that may upset the present Government of Ontario I think that it is right in principle.

Mr. Minister, my interpretation of the referendum results in Quebec were that the people of Quebec, at least the majority, did not want to restrict themselves as francophones to the boundaries of Quebec; they wanted to feel at home throughout Canada, and a meaningful proposal to make

SECTION 133, LANGUAGE RIGHTS

them feel at home throughout Canada would be the extension of 133 to at least Ontario and New Brunswick, and Manitoba, since Manitoba has been included by the Supreme Court, but to any other province which might have in the future a 5 per cent minority group in the french language.

So, even if it incurs some political problems, and there are some political problems in Quebec with amending Section 23 to apply it equally to all citizens, and there would be political problems with Ontario, I suppose, if you extended 133 into that province. Nevertheless, these types of proposals are the ones that have been consistent with the policy of the Liberal Party over the years that I have been a member of Parliament. Those have been the proposals in C-60, those have been the proposals that other governments have made over the years and what I am suggesting to you is that your attempt to compromise on minority language education rights, and on general language rights in order to gain more support among, let us say, the more nationalistic group in Quebec, for example, you are not gaining that support. I maintain you could take off all your clothes and you would still not get Levesque and his supporters support, but you are losing the support of the ethnic groups in Quebec and the minorities in Quebec by watering down the minority language provisions.

So you are losing support and gaining nothing. If you are going to go unilaterally, I suggest do what is right and not compromise. Do what we have consistently stood for as the Liberal Party over the years: equal rights for French and English, extend it into Ontario, Quebec and New Brunswick at least and have all rights apply to citizens equally and not some for one group and some for another.

Mr. Chrétien: I would like to clarify the statement you made because on Bill C-60, the Charter of Rights as proposed in that Bill, it was not obligatory that 133 applied to Ontario and New Brunswick. It was for those provinces to have the possibility of opting in and you will find that in Clause 131 of Bill C-60.

So at no point were we forcing 133 on New Brunswick and Ontario, but we were providing to these two provinces the possibility of opting in to 133.

[Page 82]

So we never had the intention of imposing Bill C-60 on the provincial governments of Ontario and New Brunswick. We always made it possible for them to opt in, so it was not an imposition in Bill C-60, it was an opting in formula for them to get involved.

In terms of your suggestion on what to do on the language education rights, you said that, basically what you are recommending is that we go with the freedom of choice.

Mr. Allmand: No. Just to clarify that, Mr. Minister, I am suggesting that you have provisions somewhat similar to what you had in C-60, where the right to opt for minority language education would be with the minority language group but not with the majority because the majority controls the political process in the province. In other words, if the francophones of Quebec wanted to give themselves the freedom to go to English schools, that is up to them, they control the legislature.

Now, my proposal is not full freedom of choice but it is to give the right to opt for the minority language education to all those who are really in the francophone or anglophone community. It

SECTION 133, LANGUAGE RIGHTS

could be Lebanese or Vietnamese in Ontario who, in many cases, French is their second language but not their first language. It could mean in Quebec some Italians, some Dutch, some Norwegians who have opted for the anglophone community but may have come here at an early age. And especially, as I mentioned this morning, your friends in northern Quebec, Charlie Watt, Billy Diamond and those people who, although their first language is Cree and Inuit, they have at an early age gone to English schools. That has been their tradition, and under this provision that can be taken away from them, Section 23, because their mother language is not English or French.

Mr. Chrétien: But the way it is drafted it is a minimum' requirement. I think that the provincial government of Quebec would be well advised to let the Charlie Watts and the Billy Diamonds and all those people go to English schools. They have the right to let them do it, but the problem is, I am looking at some amendments to that Clause but I do think we wanted a minimum interference with the educational responsibility of the provincial administration and I am afraid that the formula that you are suggesting to us will give, say, the Italians or the Greeks or the Ukrainians who arrive in Montreal the freedom of choice, because they could say: I learned a little bit of English when I was in those countries and I want . . .

Mr. Allmand: Only when they became citizens. I am suggesting to you to look again at your proposal in C-60 and improve on that. And by the way, I do not have much time left, but it is true that in C-60 your measures to extend 133 to the provinces of Ontario and New Brunswick were optional, they had to opt into that and I agree with that, but at least it was a move in that direction which I thought was good.

[Page 83]

However, at that stage, Mr. Minister, at that stage, you were trying to negotiate a consensus with the provinces. You have now taken the position that you are going to proceed unilaterally, although you do have the support of at least two provinces, Ontario and New Brunswick, and maybe Saskatchewan, it is hard for me to determine whether they are with you or against you, but I am suggesting if we are going to go unilaterally, we should do what is right, we should look ahead 100 years and not look at the next election. Be a statesman and not a politician.

An hon. Member: Hear, hear.

Senator Asselin, p. 92

Senator Asselin: Mr. Chairman, if anyone can get the floor back by making a point of order. I would advise my colleagues to do the same as what an NDP member has done a couple of times today: make a point of order and then do a declaration.

Mr. Chairman, yesterday, Mr. Minister, we discussed linguistic rights with reference to Section 133. Obviously, unfortunately, I noticed that some members sitting across, namely Mr. Gauthier, Mr. Corbin and Mr. Duclos, hesitated to make use of Section 133 as far as Ontario and New Brunswick are concerned.

However, you do not shy away from imposing to Quebec Section 23 without consulting the Government of Quebec by amending Law 101 on language in Quebec without consulting the

SECTION 133, LANGUAGE RIGHTS

Quebec government; I will not come back to this, but I see that you are rather reluctant to implement Section 133 in Ontario. In my mind, this resolution entrenches institutional bilingualism in Quebec and institutional unilingualism in Ontario and New Brunswick. Once again, Mr. Minister, Quebecers will be paying the price and will realize that they have been taken for a ride on the language question.

[Page 93]

There has been a sort of truth with respect to the implementation of provisions of Law 101 dealing with the language of education and there is a strong possibility that with Section 23 and the other sections you have included in the Charter of Rights, there will be more social upheaval due to French-and English-language education in Quebec.

Jean Chretien, p. 106

Mr. Chrétien: No. This summer we spent three months with the provinces trying to resolve that problem; we made an effort never before equalled in Canada, and I think that we clearly established the government's position which was also the position of the Opposition parties, which was that the time had come for Canada to act, We tried in good faith over the summer, and when we reached Friday morning, nothing had been agreed on; even Mr., Levesque was no longer asking Ontario to include Section 133 in the constitution.

So we did make an honest effort, and we are now following the legal method for amendment of the Canadian constitution. For the last time, we will go to England. Once the resolution has been passed, the provinces will have the right to veto the Victoria formula which we are proposing or some other formula which the provinces may propose; legally, however, the provinces will have a legal right to participate in constitutional affairs, and will no longer be restricted to addressing the British Parliament to settle Canadian problems. This will be the last time we do so.

Jean Chretien, p. 108

Mr. Chrétien: The only distinction between our point of view and Mr. Ryan's is related to procedure. As for the substance of the issue, of everything which is before the committee at the present time, all of these recommendations were made by the Provincial Liberal Party and its leader in their beige paper: the question of the protection of minority rights, the question of enshrining a charter of rights in the constitution, the questions on the concept of sharing; we can find each of these items systematically in the beige paper. And if anyone wishes to criticize me on the resolution at the present time, the criticism would be that I have perhaps not been tough enough, I have not gone as far as the beige paper in what I impose on the provinces.

Mr. Ryan agrees on the substance, but he would have preferred that we act after getting substantive agreement, I do not need to remind anyone that I worked very hard this summer to try and reach a strong, substantive agreement. And you could have seen yourselves on television that no agreement was possible, and that the shopping list presented by the Premier of Manitoba did not represent agreement amongst the provinces, and this to such an extent that today Mr. Levesque, in Quebec, is criticizing me for not forcing Ontario to accept Section 133. And when Mr. Morin had a document circulated on Wednesday, Thursday, and Friday of the Conference, when Mr. Lyons

SECTION 133, LANGUAGE RIGHTS

presented his shopping list, Mr. Levesque himself agreed to withdraw Section 133 from the shopping list.

Jean Chretien & Senator Roblin, p. 138

Mr. Chrétien: Those rights have not been given to the Manitoba francophones by this Parliament, it was given by the Fathers of Confederation in the same way that the rights of the anglophones in Quebec were given. It was inscribed in the constitution. What you are asking me is why is it there. It was decided by the Fathers of Confederation.

The point I make is I do not want to turn back the clock, I want more provinces to bind themselves. That is a good argument that you are using, that in New Brunswick there are many more francophones than in Manitoba in relation to the population and already Mr. Hatfield has said that he will use the mechanism provided in this constitution to bind the Province of New Brunswick in 133.

Of course in education, every province will be equal in education with the clause we have here. In terms of institutional bilingualism, I do think that we wish that more provinces would want to bind themselves. As I explained so many times, Ontario was expected to accept it and we were quite delighted with it and eventually, at the end of this summer, they changed their mind and I am very sorry about it, but we never intended to impose it on them.

We want more provinces to accept that and I am a bit sorry that while there were seven provinces who were willing to have a big part of institutional bilingualism accepted in their provinces in 1971, we find ourselves down now to the two obligated by the old constitution and one who voluntarily wants to bind itself, New Brunswick.

I do not think that I want to turn back the clock, the acquired rights should be respected.

Senator Roblin: Well, when we are engaged in the bill of rights and we are engaged in writing a new constitution, the Minister's reply seems to me to be a cop-out.

Mr. Chrétien: A cop-out? You want me to take away the rights that are protected in the constitution for the anglophones in Quebec and the francophones in Manitoba? Is it a cop-out to do that?

Senator Roblin: I do not think that is what I want at all.

Mr. Chrétien: Well, what do you want?

Senator Roblin: I think I want to see that francophones in other provinces have the same rights as they have in Manitoba.

Mr. Chrétien: So you want us to impose 133 on Ontario and all the other provinces, do you not?

Senator Roblin: You certainly have no hesitation about imposing other aspects of your new Constitution on provinces.

SECTION 133, LANGUAGE RIGHTS

Mr. Chrétien: I am very glad that you are telling me that I am timid about it and you would like me to impose 133 on all the provinces.

[Page 139]

Senator Roblin: I did not say that, I said provinces that have the same number of francophones as Manitoba should probably be having the same rules as Manitoba.

Mr. Chrétien: Fine. Probably or should have.

Senator Roblin: Should, in my opinion.

Mr. Chrétien: So there is a motion in front of this Committee, you vote accordingly.

David Crombie, Jean Chretien, & Bryce Mackasey, p. 139

Mr. Crombie: Thank you very much, Mr. Chairman.

Through you to the Minister, Mr. Minister, in response to a question from Senator Roblin you indicated that Section 16 of the Resolution, you indicated that it gives rights. That, as you know, is a phrase that bothers me because I think that rights

[Page 140]

come from other places, but it is not just an idle concern of an antiquarian.

I would like to refer you to Section 133 of the British North America Act and I would like to ask you what rights Section 16 of the Resolution gives to Anglophones and Francophones in this country that 133 does not? And then I would like to ask you one question in connection with the answer, I think.

Mr. Chrétien: Sixteen is in relation to the Institution of Parliament and the Government of Canada, it is not related to the Provincial institutions. Section 133, in the Constitution, is related to the provincial institutions and there is a difference. Sixteen is the confirmation of the two official languages in national institutions and 133 applies to the federal government but does not apply to all of the provinces but two: Manitoba and Quebec.

Mr. Crombie: The one change that I noted, Mr. Chairman . . .

The Joint Chairman (Mr. Joyal): Last question.

Mr. Crombie: Last question. The one change that I noted in Section 16, it refers to equal rights and privileges as to the use in all institutions of the Parliament and the Government of Canada. "All institutions" is a phrase that does not appear in Section 133. Section 133 refers only to the courts and to the legislatures and to the Parliament.

SECTION 133, LANGUAGE RIGHTS

So I am asking you whether or not “all institutions” is given a broader interpretation than merely the Parliament and the courts, and if so would that involve those other corporate entities other than the Parliament and the courts that relate to the federal government?

Mr. Chrétien: The way I understand it is that it is related to the institutions related to the federal government.

Mr. Crombie: Is Air Canada an institution?

Mr. Chrétien: It is, yes.

Mr. Crombie: Did you say “aye”? That was a Scottish response.

Mr. Chrétien: Oui. Mr. Mackasey is an expert on that matter.

Mr. Crombie: With Mr. Mackasey it was personal ownership. I want to know if it was a federal institution.

Mr. Mackasey: You would not have me here to bug you.

Mr. Crombie: He put me in the back of the plane when I was there.

Mr. Mackasey: Now I am here to bug you.

Mr. Chrétien: Air Canada is a federal institution.

Mr. Crombie: So I can assume that those which would have the same status as Air Canada would be covered by the phrase “in all institutions”?

[Page 141]

Mr. Chrétien: That refers to a federal institution like Air Canada.

Mr. Crombie: So that would be an expansion over that which exists in Section 133?

Mr. Chrétien: To that extent, yes.

Mr. Crombie: I have the question: would that involve PetroCan?

Mr. Chrétien: I do not know the legal status of PetroCan, I could check that. I consider that a federal institution.

Mr. Crombie: It may be of interest. Thank you.

-----oOo-----

SECTION 133, LANGUAGE RIGHTS

November 17, 1980: M.F. Yalden (Commissioner of Official Languages), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 6, then scroll to p. 11)

Mr. M. F. Yalden (Commissioner of Official Languages): [...] So far as official bilingualism at the provincial level is concerned, it simply perpetuates the status quo.

The rights pertaining to language use in the courts and legislatures in Quebec and Manitoba provided by Section 133 of the BNA Act and by Section 23 of the Manitoba Act are maintained.

But what of Ontario and New Brunswick? The Resolution as drafted extends no such constitutional protection to them. Yet more than 90 per cent of the Francophones outside Quebec live in these provinces and there is little difference between their combined minority populations and the official language minority population of Quebec.

Why then perpetuate this obvious imbalance? If the Resolution as a whole attempts to avoid a checkerboard Canada, why carry forward this particular inequity?

New Brunswick, we know, is ready to accept constitutional provisions relating to the courts and the legislature, in accordance with the basic principles of its own Official Languages Act. This leaves Ontario as odd man out.

Can we really accept, especially when we know that such arrangements would not impose an intolerable burden on anyone, that the province with the largest Francophone minority of all should simply be omitted from a constitutional requirement to respect the French language in the legislature and the courts? What kind of constitutional rights are we talking about that apply to one official-language minority but not to another, to one province but not to its neighbour?

A further and major omission in the matter of the courts is the right to a criminal trial in the official language of one's choice.

[Page 12]

Section 19 entrenches the right to use either language in courts established by Parliament, and Section 21 confirms the existing constitutional right to use them in the courts of Quebec and Manitoba. But beyond this, it ought to be a basic principle of justice in Canada that an accused person in a criminal case has the right to a trial in his own official language.

Lorne Nystrom & M.F. Yalden, p. 21

Mr. Nystrom: [...] Let me read Section 43 for the Committee:

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

SECTION 133, LANGUAGE RIGHTS

Section 34 says the same thing, but applies only until we have our amending formula.

The concern I have here is, taking for example francophone rights in, say, the Province of Manitoba, where under Section 23 of the Manitoba Act, they have rights which are similar to anglophone rights under Section 133. Under Section 43 of the resolution before us the legislature in Manitoba could pass a resolution taking away those rights if the House of Commons were to pass a similar resolution; in other words, the House of Commons, the Senate and the Legislature of Manitoba could pass a resolution to amend our constitution which would take away those rights. We would not have to go through an amending formula, nor have the right of going through a referendum. And the same could apply in Quebec or in Manitoba where you are dealing with a small group of francophones, a very small minority. You are dealing with a small minority. It could apply in a different way in Quebec. For political reasons the federal Parliament or the federal government could decide that it is pretty unwise politically for them, and under Section 133 where the anglophones get all these rights; and for the same reasons Quebec's Legislature could feel the same way and pass a resolution along with Parliament taking away these rights.

Have you thought about these two sections and whether or not there should not be some exception to the application of Sections 34 and 43? We had the Justice Minister a few days ago saying that these rights should not be taken away. Should that be the case in these circumstances, how do you feel about it? Have you given any thought to the matter?

The Joint Chairman (Mr. Joyal): Mr. Yalden.

Mr. Yalden: Yes, Mr. Chairman.

My understanding of the matter—the lawyers around the table will soon correct me if I am wrong—is that Section 50 provides that the Canadian Charter of Rights and Freedoms can only be altered in accordance with Section 41 or Section 42, and therefore cannot be altered under Section 43.

[Page 22]

Whether we have some sort of contradiction here where, by taking the Section 43 end of the stick, you arrive at a conclusion that you can change fundamental language rights in respect of Manitoba by the act of the federal parliament or a decision of the federal parliament or the Manitoba legislature, on the one hand, but taking the Canadian Charter of Rights or the fundamental rights end of the stick, you come to a conclusion that you cannot, I had thought that Section 50(b) was intending to say that you could not touch anything relating to the Charter of Rights, which includes language rights, without following out this rather more complicated procedure proposed by the federal government in Sections 41 and 42. But I may be wrong.

Mr. Nystrom: Section 50 says there are certain things we cannot do unless we go through the amending formula, we cannot change the Canadian Charter of Rights and Freedoms.

But I am not talking about that, I am talking about Section 133 and also Section 23 of the Manitoba Act which are beyond the charter, and therefore rights can be taken away through Section 43.

SECTION 133, LANGUAGE RIGHTS

Mr. Yalden: it seems to me that we have to sort of wrap up Section 23 and Section 133 along with the language rights that are stated in the present resolution.

In other words, it seems to me that it would be unconscionable that we should emerge from all of this with Section 23 of the Manitoba Act or Section 133 of the British North America Act being weaker provisions than the one set out in the Charter of Rights on exactly the same question, so that we would have to amend them in different ways to bring the two types of provisions together to give them equal force of law—and constitutional lawyers would have to help, because it seems to me that under the British North America Act you cannot change any provisions all that easily.

In other words, I am not sure that Mr. Nystrom is not creating a situation where, on the one hand, you could get at Section 133 and Section 23 via the Section 43 amending- formula. because it is not part of the new constitution, nor is it part of the old constitution, where you could not change in respect of language without going through some pretty difficult requirements.

In any event, assuming that these sections are subject to change and that the purpose of this Committee is to seek out weaknesses in the resolution and remove, if Mr. Chairman, Mr. Nystrom is correct in saying that there are two kinds of language rights being created by this very resolution, one of which is retained from the past, Section 23 in Manitoba. and Section 133 of the British North America Act—the other being created by this new resolution. and if it is the case that one is stronger than the other, then that should be changed, and changed forthwith.

But that was not my impression. But I, certainly, am impressed by Mr. Nystrom's line of questioning and thinking on the matter, and I would hope that wiser legal heads than mine are taking note of these observations and making very, very sure that the provisions on the matter of language rights are water tight.

[Page 23]

I would not consider it to be water-tight if language rights in the matter of education of a minority could be changed overnight by the Parliament of Canada and the province concerned. I would certainly not think that was part of what we have been calling the Confederation bargain or part of the effort towards entrenchment, which would be very shallowly entrenched.

Lorne Nystrom & M.F. Yalden, p. 24

Mr. Nystrom: I would like to ask you a question about Section 133. I was very pleased with your comments that Ontario and New Brunswick should be bound to Section 133 the way Quebec is, because of equality in our country. We have heard some complaints from some people, particularly in Ontario, that that would be very difficult to do; that it is very complicated, with tremendous implications and I found that very, very hard to understand.

In your view would there be many difficulties of any major consequence for Ontario to bind itself? Are there some major ramifications that are a great mystery to us? I have been very mystified by the reaction of some of the politicians and others in Ontario.

SECTION 133, LANGUAGE RIGHTS

Mr. Yalden: Mr. Chairman, I am sure that in view of what I am about to say I shall hear tomorrow that I should mind my own business. but the answer as far as I am concerned is no, it would not cause any overriding difficulty. I do not say that any of these things can be done without some difficulty, without the need to exercise some imagination and without the need to work at it and work hard at it; but I do not see why, if these provisions can be made to apply successfully in other provinces, they cannot be made to apply in Ontario.

I do not know whether if they were accepted in Ontario there would have to be or if there need not be a phasing in provision but I do believe they can be brought in without difficulty.

As far as the legislature is concerned. I cannot see what difficulty that would create. Even if Ontario were to set up a system of simultaneous interpretation at Queen's Park, which would not be required by this resolution, even if that were to be done, it would be costly but not difficult.

The translation of the records of the legislature and the Committees of the Legislature and so forth is not difficult. It may cost a certain amount of money; a lot of things cost money in this day and age. I submit to this Committee that it has a symbolic and a real importance in the province which happens to have the largest French speaking minority, which happens to be the neighbour of the Province of Quebec which is required to translate and to have the records and journals of the Legislature of the National Assembly in both languages; that it is important that this take place in Ontario. If it is important, it is worth spending the money.

The same comment I think would apply as far as the courts are concerned. There has developed in the vocabulary, in the terms that are used in this field, a tendency to use expressions like official bilingualism or institutional bilingualism and that apparently are designed to suggest some very, very evil things indeed. Institution has a nasty ring about it. It is the sort of place you put someone you to get rid of for a time and therefore institutional bilingualism has that same pejorative tone and taste about the word.

But what in fact are we talking about? We are talking about the use of the two languages in the Legislature and in the records and journals et cetera of the legislature and we are talking about the use of the two languages in and before the courts, which I would have thought most Canadians would consider of capital importance as far as the courts are con-

[Page 25]

cerned. The Government of Ontario already has bound itself by implementing the revised Criminal Code.

We are not talking about a whole host of new ideas that have never been considered and that would shake the foundations of my home province, I do not believe, and therefore I believe that Ontario should be bound.

Jean Lapierre & M.F. Yalden, p. 31

Mr. Lapierre: You claim that the provisions of Section 133 could be extended to Ontario and other provinces without causing undue hardship.

SECTION 133, LANGUAGE RIGHTS

When Mr. Nystrom raised the question, I told him I wanted the provisions of Section 133 to be applied across the country. and you referred to this earlier. In your brief, you limit your comments to Ontario and New Brunswick. and I would like to know whether you think that the minority rights and the rights before the courts conferred by Section 133 should be extended to everyone.

[Page 32]

Mr. Yalden: I have not changed my mind since I responded to Senator Tremblay's question and comment. Ideally, I would prefer that the provisions of Section 133 and Sections 17, 18 and 19 of the resolution we are dealing with this evening be applicable and applied throughout Canada.

I mentioned the four central provinces because that is where most of the minority reside. but I would certainly prefer that the 40,000 francophones living in British Columbia have the same rights.

I know that what is more important for these 40,000 people, more important than the symbolic gesture of publishing these proceedings of the provincial legislature in English and French and providing education and social programs, is that the provincial and federal governments try to give them the means of existing, developing and fulfilling their potential, this is more important than using both official languages in the provincial legislature.

The courts, however, are another matter.

Of course it is important. But we have to ask ourselves whether British Columbia has the capacity to hold trials in French. I do not think that the issue is the same in Ontario.

Would judges, juries, court reporters and court staff be capable of working in French?

I do not think that this is impossible in the long run, but it is doubtful that it could be done at this time. While I am fully in favour of the principle and would like to see it acted upon, I would hesitate to apply it at this time in British Columbia, Alberta, Newfoundland, Prince Edward Island or some of the other provinces. What I am saying is that we should do it where it is feasible, that is, in Ontario and New Brunswick and in the two provinces where it is required by the existing Constitution.

Bryce Mackasey & M.F. Yalden, p. 37

Mr. Mackasey: [...] I want to refer Mr. Yalden back to a point raised by Mr. Nystrom earlier on, namely, the possibility of using Section 43 to offset or negate a minority language right which appears in Section 23.

I think if you were to read Section 43 rather carefully, you would be relieved to know that it cannot affect Section 23. The limitation in Section 43 makes it clear that you could amend the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces

SECTION 133, LANGUAGE RIGHTS

Section 23 applies to all.

However, if that makes you happy, I shall now make you unhappy by suggesting that Section 43 can be used to negate Section 133.

Mr. Yalden: That was his point, sir.

Mr. Nystrom: Section 23 of the Manitoba Act is the same as Section 133 of the BNA.

[Page 38]

Mr. Mackasey: I am sorry. I apologise.

Mr. Yalden, I have been one of your admirers for some time and I hesitate to take issue with you too strongly this evening. I think your role is an extremely difficult one, and it is almost a dedication or vocation to preach minority language rights in this country.

Perhaps, just to capitulate or summarize what you have said tonight, am I right in saying that you want entrenchment, not because there has not been progress, but you do not want that progress wiped out by the stroke of a pen of some provincial legislation. Am I right?

Mr. Yalden: Well, Mr. Chairman, I think I said that I wanted entrenchment precisely because I want the assurance given to the majority that you cannot have without entrenching constitutional provisions. I did, however, also say-and I suppose if I had the time to concentrate on the history of the thing I could have said more clearly that whilst there has been progress, that progress has been very recent and that progress is hardly sufficient, and there were many, many decades as Mr. Mackasey, who has great concern for these matters of individual rights, knows very well where there was no progress, where on the contrary we were going backwards, where we had what happened in Ontario or New Brunswick or Manitoba in the 19th and early 20th Centuries, where there was no question of progress.

I said both things. I think that we simply cannot say here, around this table in the Parliament of Canada or in any Legislature of the province: do not worry fellows, trust us. That has been tried and that was a flop. The trust was misplaced.

I also said that even though latterly in the last decade or so there has been progress, real progress, that you still need the constitutional protection to ensure that that progress will not suddenly dry up one of these days.

Mr. Mackasey: Well, I think this is a very valuable contribution, Mr. Yalden, because there are too, too many people who are not convinced that we need to entrench individual rights in the constitution and your testimony following that of Mr. Fairweather, which can certainly be considered very non-political at this stage of your careers. I think will help a lot of people who watch these hearings or read about our progress or lack of progress, will still have an open mind as to whether these rights should be entrenched or not. I think your testimony and that of Mr. Fairweather goes a long way to at least help Canadians come down on the side of entrenchment, and maybe I am being naive but I sense that same feeling developing in the Committee, which is the purpose of the Committee, I suppose, to treat these things objectively.

SECTION 133, LANGUAGE RIGHTS

I share your reservation, Mr. Yalden, that this is not a perfect document by any means. I would like to see freedom of choice in our constitution, as you would, and if we had freedom of choice you would not need the rather tortuous language that you refer to dealing with minorities and immigrants and all the rest of it, but having said that and having

[Page 39]

spent some time in the Quebec Assembly, I have to take a little issue with Page 5 where you talk about statistical half truths and I think what you are referring to there is the concern of people in the Province of Quebec and in the Quebec National Assembly that somehow the assimilation of the new Canadian to Quebec by the English community was a determined threat to the culture and language of Quebecers. Am I right in that?

Mr. Yalden: Yes, sir, I hesitated over that phrase, when I left it in I thought somebody was going to . . .

Mr. Mackasey: Well, I am doing it only for clarification because I share their views at times. I feel despite certain discrimination in Bill 22 and Bill 101, Quebec is probably the only province with an impeccable record insofar as it treats its minorities, and the reason that I can sit here and endorse this resolution, Mr. Yalden, despite these imperfections, despite the fact that it is less than perfect, despite the fact that it is a lot less than I have advocated as a very simple backbencher up and down the country in the sixties. It stems from the fact that the people who are denied freedom of choice in Quebec are indeed the majority. Do you agree with that? It is the French speaking Canadians who do not have the freedom of choice in Quebec, not the English speaking Canadians?

Mr. Yalden: Well, I will say, Mr. Chairman, there are at the moment in Quebec, under Bill 101 there are different groups, as Mr. Mackasey knows, and not all of them have freedom of choice. One group that does not have freedom of choice is the majority, of course.

I have had it put to me on many occasions, as I am sure he has in the National Assembly, that the majority does not need protecting because if the majority does not like it, they kick the government out and get another one. I personally think that is too simplistic an approach and I have said this evening that I am in an ideal world, a believer of freedom of choice, and moreover, I think I said that most of those who are engaged in this debate are fundamentally believers in freedom of choice. I notice the Prime Minister made remarks to this effect before the Chamber of Commerce in Quebec a short while ago. We have all of us heard on a number of occasions the Premier of Quebec, Mr. Levesque, say that it is humiliating to have to legislate in the manner of Bill 101, so lots of people are in favour of freedom of choice, I think.

Mr. Mackasey: Well, maybe I am rationalizing my position, but when the people of Quebec, I am convinced, are sure that the statistical half truths are no longer applicable, or as the science becomes more sophisticated, that extending freedom of choice to all citizens of Quebec no longer holds a threat to their language and culture, my belief, based on my many years in the province, is that the French-speaking Canadians would generously, and without reservation, extend that right to their minority.

[Page 40]

SECTION 133, LANGUAGE RIGHTS

I just want to say that, because of the time and because Mr. Beatty wants to speak, that I share the same agony as you do in that this is not a perfect document. but I suggest to you, Mr. Yalden, that as imperfect as it is, it does provide an opportunity in the future for the provincial Premiers to sit down and forge the perfect document since this time they will be sitting down with the bare minimum of rights, which is all this bill can pretend to include. We would be wrong to create the impression that we are not unilaterally amending the constitution; we are all adults, we know we are. The question is: how far do you go when you are amending the constitution unilaterally and not really taking into consideration the provinces' views?

We are doing it, obviously. because the very injustices that you have pointed out and Mr. Fairweather pointed out cannot be resolved in any other fashion, but having said that, is it too idealistic to presume that in the future the 10 provinces, reflecting the goodwill of all people on this Committee and with an amending formula at their disposal, could very well sit down one day and forge a bill of rights that you envisage and I envisage"! Do you not think this is possible?

Mr. Yalden: Well, yes, Mr. Chairman, I think it is possible.

I would like to say two things very, very briefly: firstly, on this matter of half truths, I would not like to leave the impression anywhere that when I used that expression I was referring to the very deeply felt views of some Quebeckers about the threat to the French language in that province. That is not what I am referring to. What I had in mind was a reference to the kind of debate that you read raging back and forth in the press between those who claim that there are x or y thousands of people emigrating and immigrating and the net flow is this and the net outflow is that, and where there is a tendency never to quote any statistic that does not favour your own thesis. You will read one day in *Le Devoir* or the *Gazette* one view of this sort and the next day you will read a totally contrary thing. There is a sort of demographic guerilla warfare going on and that is what I was referring to.

-----oOo-----

November 18, 1980: Alex Paterson (Co-president, Positive Action Committee), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 7, then scroll to p. 52)

Mr. Alex Paterson (Co-president, Positive Action Committee): [...] The first question which you have heard a great deal about—I understand from Mr. Yalden—is a question of the extension of Section 133 to New Brunswick and Ontario. I do not propose to go over the argument. It is in our brief, but I would like just to refer you particularly to page I I of the French text because I think here as anglophone Quebeckers, we can bring a perspective to the rest of the country from our own experience.

We say at page 11—and I quote:

[Translation]

SECTION 133, LANGUAGE RIGHTS

As English speaking Quebecers we have borne witness to the use of both languages not only in the Legislature but also before the courts in our province. Whether it is Montreal where there are nearly one million English

[Page 53]

speaking people or in the Beauce where only a handful reside, whether it be a civil or criminal trial, any witness or litigant can testify or plead in both languages. Even under Bill 101, this right, while limited for corporations in civil trials, never attempted to prevent witnesses or litigants from speaking English in the courts. The bilingual courts of Quebec are a source of pride to our bar and bench and an example to our country.

To give a personal example, when I was a third year student, I went to the Beauce during summer and I was often in the courthouse and even in the Beauce where I was almost the only English speaking person there, it was always possible and I was always welcome to speak as a witness or as a lawyer in English.

In my fourth year, I went to Rimouski for a whole summer and even though I was almost the only English speaking person in Rimouski, once again, I was always welcomed when I spoke English before the bench in Rimouski.

Now, when people from Ontario tell me it is impossible, it is not practical because we do not have enough French speaking people in certain areas of Ontario I wonder, since it is possible in Rimouski, since it is possible in St-Georges-de-Beauce, since it is possible everywhere in Quebec for an English speaking person to speak English before the courts, how is it that in Ontario it is impossible to address a court in French?

[Text]

So, in the heart of the Positive Action Committee I think we would like to extend this right to speak in the legislatures of the provinces and in the courts, civil and criminal, in English and French at the present time, taking to a great degree the experience as reported by the Pepin-Robarts Commission in the hearings they had across the country, we have limited in our brief the plea that this be extended at least to New Brunswick and Ontario. We say, going one step further, that we hope, once it has been implemented in these two provinces, as it is in the provinces of Quebec and Manitoba, that the neighbouring provinces will then gain steam from the experience and realize that it is not a limiting factor, and while it may have some practical difficulties and incur some costs, the enriching ability to proceed in both languages across this country will, and should, reach the feelings of every Canadian and every part of the country, so that ultimately we have bilingualism in the courts and in the legislature.

I think it unnecessary to mention for more than a moment the question of bilingualism in the criminal courts. It is inconceivable to us, who have had the experience of seeing people have the ability to be tried in English or French in Quebec, that any person should be put on trial where their liberty or even their life is at stake, it is inconceivable to us that those people should not have the right to be tried in this country in English and French, not just wherever the numbers warrant, but everywhere in Canada.

SECTION 133, LANGUAGE RIGHTS

Senator Asselin & S. McCall (Positive Action Committee), & Lorne Nystrom, p. 61

Senator Asselin: Earlier, you also mentioned extending the application of Section 133 to Ontario and New Brunswick.

Obviously, your Positive Action Committee has no branch offices, if you will, in the other provinces. Nonetheless, it is certain that you must have fairly close relationships with the various anglophone majority language groups in other provinces.

Does your committee intend to familiarize the anglophone majority with the situation, especially in Ontario, to ask them to put pressure on their government to have Section 133 extended to Ontario?

Mr. McCall: We have already done precisely that. We presented a brief before the Ontario committee a year ago. . . One and one-half years ago, on precisely those issues. We have sent briefs and telegrams to Premier Davis, Mr. McMurthy, et cetera, and we are in constant contact with francophone Ontarians; this is how we have applied pressure.

Senator Asselin: Mr. Chairman, I will let my colleagues ask other questions.

Thank you, gentlemen.

[Text]

The Joint Chairman (Senator Hays): Mr. Nystrom followed by Mr. Mackasey.

Mr. Nystrom: Thank you very much, Mr. Chairman.

I want to pick up where Senator Asselin left off on Section 133 and first of all compliment you on your statements about it being extended to Ontario and New Brunswick in particular. I often thought that the rules that apply in Manitoba and Quebec should also apply in the other two provinces where we

[Page 62]

have the largest minorities of francophones in this country and I want to ask you as a Quebecois who would be involved in the question of the future of your province and the future of our country for the last three or four years, how important symbolically is it for the future unity of this country for Quebecois to have the same rules apply in Ontario as apply in Quebec?

Mr. McCall: If I may just say a word on that, I think it is very important that Quebec, and leaving Manitoba aside, that Quebec not be the only province where these bilingual rights are entrenched, not be the only province where laws must be published and passed in both languages, where both versions are official, not be the only province where the courts are bilingual. It places too much, if I can put it that way, of the burden of bilingualism on us in Quebec and Quebec then can always say: what are the other provinces doing? They are not doing anything. They are not giving their

SECTION 133, LANGUAGE RIGHTS

French speaking minorities the same rights and privileges that we give the English speaking minority in Quebec.

For that reason, and also you mention the numbers game, there are in Manitoba, Ontario and New Brunswick approximately the same number of francophones as there are anglophones in Quebec. Surely, Mr. Nystrom, what is sauce for the goose is sauce for the gander. If Section 133 is entrenched in Quebec it should also be entrenched in at least these provinces. We do not want to even necessarily restrict it to those provinces because who knows, in the future may be, there may even now be significant Francophone minorities in other provinces so that we would should consider eventually the extension of Section 133 to other provinces as well.

Mr. Nystrom: Under Section 43 of the Resolution other provinces can opt in and I think your idea is a positive one. Mr. Mackasey has said many times in Parliament and before this Committee that Quebec has set a very fine example under the Liberal Party and the Party Quebecois for its treatment of the anglophone minority and I want to say that I concur 100 per cent with him and I am glad to see that you are repeating the same sentiments here today.

Mr. Paterson: I do not think we would go quite that far but we will wait for Mr. Mackasey's question.

Mr. Nystrom: I am also very curious to hear you say that in terms of Quebecers' perception of the country, it is very important that the same rules apply in Ontario as apply in Quebec.

Bryce Mackasey, p. 68

Mr. Mackasey: [...] Senator Asselin made an eloquent plea for Section 133. We should not have to be asking Ontario and New Brunswick to opt in; we should not have to be forcing them in. The concern for national unity in Ontario should be such that Premier Davis should demand the right to be enshrined in that constitution!

But the dilemma of the Federal Government and the Prime Minister of this country is such that, on the one hand, if he were to proceed to enshrine more rights, freedom of choice, across Canada, the right of every Canadian to be educated in either of the two official languages wherever he lives in this country, and the right of all Canadians to speak in either of the two official languages when dealing with their provincial or federal governments that would be the type of constitution which I would like to see and you would like to see. But even you expressed reservations about the procedure, Even you pointed out—quite-properly—to the Prime Minister and to all of us, how potentially devious our action of just going to the very minimum, to bring back the constitution with a proposed amending formula, and some very basic human rights which—for instance, Section 1—you could drive a truck through.

Warren Allmand & Alex Paterson, p. 75

Mr. Allmand: Well, I just thought I had better make that point.

SECTION 133, LANGUAGE RIGHTS

Finally, with respect to your suggestion that we extend Section 133 of the British North America Act to Ontario and New Brunswick, I support you fully on that and I have said that before this Committee.

In response to the answer that we get from Ontario that they just cannot do it because they are short of personnel, short of judges, you are a practicing lawyer, what do you think about the proposal that for a certain period of time that we share, we pool judges and court personnel in order to meet local situations. Why could not the Attorney General of Ontario meet a demand for French speaking trials, let us say, in North Bay or Timmins or Cornwall, request the Bar of Quebec or the French of Quebec to loan judges. I cannot see where that would be that bad. We have Quebec judges going to the Supreme Court sitting on cases that come from Ontario. I think there are ways around this and I think they are not impractical.

Mr. Paterson: Well, Mr. Chairman, if I may answer that very briefly. I understand the situation in Ontario has moved from as recently as 1977-1978 when there was something like 7 bilingual Crown prosecutors to, I think Mr. McMurtry gave the statistics last week of 28, 29. The situation on bilingual judges obviously, whatever its improvement will follow.

I am not so sure that you could take a civilly trained judge and pop him into Ontario and have a satisfactory hearing. I think it would take some time. I am not saying that that is not a possible solution but I think it would take some time and some training to achieve it.

What I believe is that until Ontario, and it may require the rest of the country to give Ontario this push, until the push is given, Ontario is not going to take the last step, but with the push, I believe from everything I am told by the members of the Ontario Bar and we have met with the Ontario Bar and the Quebec Bar many times at the request of the Attorney Gener-

[Page 76]

all of Ontario, that it is practically possible. I do not think the argument that it is impossible is an acceptable argument. They may have problems, but I think the Quebec Bar has already shown a great willingness to work out those problems with Ontario, but I think what it now requires is that a committee such as yours, to make the unanimous recommendation, carry that through.

I am convinced from everything I have been told by the members of the Ontario Bar and even the Attorney General that it can be achieved.

John Fraser & Alex Paterson, & S. McCall p. 77

Mr. Fraser: I have your point and it is made very clearly. I think the vast majority of Canadians in every part of the country, certainly at home in my own province, want patriation and they want an amending formula. Now, there is a difference of opinion as to what that amending formula ought to be and one of the concerns is that it is lopsided in favour of the federal government at the moment. But you have also suggested that the language rights which are presently in our constitution, in the British North America Act under Section 133, ought to be extended to other provinces and you mention specifically Ontario and New Brunswick.

SECTION 133, LANGUAGE RIGHTS

Now, let us assume that this Committee did recommend that. At what point could you consider that it was appropriate that those rights would be extended to other provinces, and let me ask you also, because you mentioned more than just

[Page 78]

language rights in the courts and in the legislatures, you also mentioned the right which I think you felt should be entrenched to receive certain social services in the minority language in the event that was the language necessary to reach the minorities.

Now, can you tell us what you are thinking about in terms of what we should be looking to in terms of what is appropriate to extend those rights beyond your suggestion? I say this not in a perjorative way but, for instance, I do not know whether it was Mr. McCall or Mr. Paterson said, when speaking of bilingualism in the courts, and I think you said it is inconceivable that an accused cannot be tried in their own language. Now, I think it is inconceivable where you have a significant minority and where you can provide the services, but it is much more difficult in some other parts of the country.

Presently, under the Criminal Code, amendments went through several years ago which established the federal authority with the power to declare this in different provinces and we have not been able to do it yet in British Columbia because of a real problem in having sufficient people who can speak French competently, and I am not talking about those who like myself who have struggled away to learn it on a functional basis, but to speak competently enough to serve a litigant within the courts, so I would be interested in your views?

Mr. Paterson: I will just answer the very narrow question of criminal trials and Mr. McCall will go on after that.

My statistics are not up-to-date, I think they come from the 1976 statistics, but there is some 38,000 French speaking people in British Columbia in 1976; is that about right? Forty.

Mr. Fraser: Just on that point, the figures vary but the difficulty is that they are not in one place.

Mr. Paterson: I appreciate that, but it seems to me, and I have to bow to your much more familiar knowledge of British Columbia, but it seems to me that if you have in the order of 40,000 people, albeit scattered to a degree, you can not have a court outside the house of the man that is faced with a criminal trial, but it is hard to believe that you can not bring a man to a court in British Columbia, be it Vancouver, Victoria or elsewhere, and provide for a criminal trial in that centre.

Mr. Allmand's suggestion, which raises complications in civil trials, in non-criminal trials in Quebec and Ontario because of the different legal systems, does not apply in criminal cases and I can not see why, if it was a problem for British Columbia alone, why even there could not be a joint pool of judges that were bilingual and prosecutors that were bilingual in the two or three or four Western provinces. However, I do not think, really, the practicalities of that can be so serious and the cost can be so serious that it can not be achieved when you look at the numbers of people in Saskatchewan, Alberta and British Columbia who are French speaking. Maybe there is going to be a problem in the Yukon and the Northwest Territories, Newfoundland, but it is hard to see a

SECTION 133, LANGUAGE RIGHTS

problem in those provinces because the numbers that exist you would imagine could produce sufficient bilingual judges and

[Page 79]

crown prosecutors to achieve that result, at least in one centre of the province.

Mr. McCall: We recommend that the right to speak both French and English in the Legislature be extended throughout Canada, that this is not just a bit of empty symbolism but an important right if you are a Canadian to be able to speak either of the two official languages in any Legislature in Canada.

Now, about Section 133, perhaps we could have some provision that when the proportion of francophones in a province reaches a certain level, that automatically Section 133 would be extended to that province. I do not know what that level is, perhaps you have some suggestions as to what it might be. At the moment we are only recommending it be extended to Ontario and New Brunswick but one could easily see in the future that we could also recommend when the number of francophones reaches a certain level that it be extended to other provinces and I hope we will recommend that. However, what the level is, we do not have any idea at the moment.

The Joint Chairman (Senator Hays): This will be your last question, Mr. Fraser.

Mr. Fraser: Yes, thank you, Mr. Chairman.

Some years ago consideration was being given to the amendments in the Criminal Code. There were suggestions made that in order to get around the difficulty of not enough francophones in British Columbia who could speak French well enough to be judges, and remember we have to go beyond the provincial court level to the Supreme Court, Court of Appeal, that this could be done by agreement between the provinces to have a travelling court during the interim years while sufficient numbers of capably French speaking lawyers and court officials developed in the province of British Columbia, and I was very interested to see that my colleague, Warren Allmand, suggested that, but just one last question.

The question of Section 42 is important and I am glad to see that you have reservations on it, but you have said that if we can not come to some better agreement, then we should accept it anyway but I want to ask you about one other provision in this resolution which you may not have noticed, and that is Section 44, and that section says that if an amendment comes through Section 41, that is the non-referendum amendment, and the Senate tries to hold it up, then it can be brought back to the House of Commons and become law whether the Senate approves it or not. I am wondering in view of the fact that you are very sensitive to your own feelings in the province of Quebec, whether you think that that is a provision which is likely to meet with approval in the province of Quebec because what it does, of course, is remove the Senate's function as the guardian of provincial and regional rights, and I am wondering if you had noticed that and whether you have any comment to give us.

Mr. Paterson: I think I can only tell you that that has not been the subject of a great deal of debate to date in Quebec, either in the press or elsewhere that I have seen. We did not address ourselves to Section 44.

SECTION 133, LANGUAGE RIGHTS

Professor Irwin Cotler (Canadian Jewish Congress), p. 95

Recommendation number two: we believe that Section 133 of the BNA Act and its equivalent section, 23 of the Manitoba Act should be extended to New Brunswick and Ontario.

Section 133, which the courts in both *Blakey* and *Foret*, Supreme Court in both the Quebec decision and *Blakey* in the Manitoba decision in *Foret*, rightly called a fundamental rule of law principle enshrines French and English as the official languages of the courts and legislatures of Quebec and Manitoba.

We believe that this should be extended to Ontario and New Brunswick as was initially recommended in Bill C-60, again in the Canadian Bar Association Report, and earlier today in the Positive Action Committee Report and the federal proposals of August 22.

It does not appear to us to be sufficient, though we are encouraged by the fact that New Brunswick has rights of this kind in its own Provincial Human Rights Charter and has been responsive to the suggestion that it be included in this charter as well, or that Ontario is moving and we are encouraged by those developments in that regard.

We believe, Mr. Chairman, we understand from the testimony that was given by the Justice Minister before this Committee, that the government may have found itself somewhat in a kind of "Catch 22" position, that if it moves too much, that in fact it may be accused of moving too quickly, and if it does not move far enough, then it will be accused of in fact not giving expression to its own stated principles. However, we believe that this Committee can and should go on record with respect to the incorporation of a fundamental principle of the rule of law with respect to the extension of Section 133 to New Brunswick and Ontario in the hope as well that that may subsequently be adopted by other provinces in this country.

If I am not mistaken, at the time of the Victoria Charter in 1971 some seven provinces at that time were prepared to do

[Page 96]

that so I do not think one can await the vagaries in that sense of particular governments at particular moments in time, and the Committee might be able to take that initiative, at least with regard to entrenchment re Ontario and New Brunswick.

Finally, Mr. Chairman, we believe that a person charged with a criminal offence has a right to be tried in English or French if that is his ordinary language, and every native person to be tried in his mother tongue As the late professor Herbert Packer once put it: The criminal sanction is uniquely coercive and uniquely hazardous. In that regard we believe this right should be entrenched as well. If there are problems or complications by way of insufficient personnel or administration, it seems to me that the Committee might with regard to this particular aspect of the charter suspend its application until it is appropriate from an administrative point of view to implement it, but the principle itself we believe should be included in the charter.

SECTION 133, LANGUAGE RIGHTS

Professor Max Cohen (Chairman, Select Committee on the Constitution of Canada of the Canadian Jewish Congress), p. 106

Professor Cohen: To really do justice to that very important question, Mr. Nystrom, one would have to set out in two

[Page 107]

columns the present language proposed here and the kind of rights which now exist, whether it is bail, evidence, legal rights, mobility rights, and to see how far the system proposed here derogates in any way from what may be called the existing mixture of common law and statutory rights.

I am not prepared to be that categorical without that kind of meticulous homework.

My instinct, quite frankly, is against the assumptions made by the Civil Liberties Association. My instincts are against the assumptions made by the Civil Liberties Association, and I will tell you why. It is not that I am any less a civil libertarian than they are. In fact, I believe my record is as good as theirs in the battle for the classical rights of all of us.

But I do think that, here is an effort to introduce a basic charter regime, where we have not had it before. We had it in Section 93, and in Section 133, and in Section 123 of the Manitoba Act. We have parts of a charter regime. We have little bits and pieces of it.

Lorne Nystrom & Max Cohen, p. 110

Mr. Nystrom: I would like to refer you now to Section 42, which is the amendment procedure. In your opening comments tonight, you said you were sticking to the Charter and not getting into aspects of the resolution before us. But under Section 42, under certain conditions, a national referendum may be held to change the constitution of Canada.

Now, my understanding of the main purpose of the referendum is to break a deadlock concerning the division of power as between the federal power and the provinces. We also had Mr. Chrétien, the Minister of Justice in here saying that once we have acquired the right in this country that that right should not be taken away and he referred specifically to Section 23 of the Manitoba Act and Section 133 of the BNA Act as it pertains to Quebec, providing rights for the English minority in Quebec and the francophone minority in Manitoba.

I was wondering whether or not you had given any thought to limiting the scope of the referendum that is referred to in Section 42 so that we could not have a referendum to take away the rights that we have acquired under the Charter. If we wanted to add rights, we could always add the rights through the amending formula; if we wanted to change those rights, we could, always change them through the amending formula. But is there any reason to have a referendum provision that is applicable to rights and taking those rights away.

Professor Cohen: I thought there was something here which says that the Charter could only be amended in accordance with 50(b). What does it do to your question?

SECTION 133, LANGUAGE RIGHTS

Mr. Nystrom: That is what I am basing my question on because it says that . . .

Professor Cohen: 41 or 42.

Mr. Nystrom: Yes, 41 is the amending formula, 42 is the referendum.

Professor Cohen: When we began our homework, Mr. Nystrom, in all frankness we had a choice to make. There was not much time, the meeting of this Committee occupied us in August and September. We were given a target date more or less that blew out of the announcement of October 6 and it was all we could do really to do justice to the complexities and the importance of a Charter. I am not prepared really to enter into a debate on the amending formula at this time simply because I have not done my homework with the degree of sophistication that it deserves.

-----oOo-----

November 19, 1980: Eric Maldoff (President, Council of Quebec Minorities), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 8, then scroll to p. 31)

The next point we would like to bring to your attention is the question of Section 133 of the BNA Act. We see this issue as vital, we believe that Section 133, which guarantees the right to use English and French before the legislatures and courts, as it stands right now, of Canada, the Province of Quebec and the Province of Manitoba, should be extended at least to apply to New Brunswick and the Province of Ontario.

Our Quebec experience indicates that this is possible and people can live with this, it is a workable recommendation. Indeed, we have pleaded as the Council of Quebec Minorities on many occasions with Mr. Bill Davis, the Premier of Ontario, that he should move to see Section 133 expanded to apply to the Province of Ontario. As recently as November 11 we cabled the Premier of Ontario and urged that he take this step.

In light of the recent experiences we have lived, certainly in Canada and in Quebec, we know that it is vital that a gesture of this nature be made. It is an important step forward, it is an important affirmation of the fact that English and French are Canadian languages.

We note with great pleasure that Senator Roblin and Messrs. Crombie and Nystrom have in fact indicated their support for this proposal.

Next we would feel that the right to use English and French in legal proceedings instituted by the Crown where the liberty of the individual is at stake must be guaranteed. Nothing is more fundamental than a person's right to his liberty and this protection must be ensured to Canadian citizens.

Roch La Salle, Gérard Levesque (Secretary General of the French Canadian Association of Ontario), & Eric Maldoff, p. 36

SECTION 133, LANGUAGE RIGHTS

Mr. La Salle: I see Mr. Levesque that this question does not seem to be of great interest to you. Nevertheless as federal member from the Province of Quebec. I feel that we should know the witnesses position regarding our present constitution which provides for these two levels of government.

All your recommendations will have a direct bearing on provincial policies and budgets. Your brief does not seem to give any consideration to the costs which your recommendations might entail.

You say on page 3 of your brief that all citizens should have the right to express themselves in English or in French in both the federal parliament and in all provincial legislatures. On page 4 you say that section 133 of the BNA Act should apply at least to the provinces of Ontario, New Brunswick, Manitoba and Quebec. So from one page to the next you have reduced the right to use French and English from all provincial legislatures to only four-and I should like to know why.

Mr. Lévesque: As you know Mr. Chairman, Section 133 concerns not only provincial legislatures but also courts, This is what makes the difference between Sections 1 and 2. We said this should apply to at least four provinces since other provinces might be added to this list. You will remember that during the sessions which led to the Victoria Charter of 1971, a number of provinces had stated that they wished to come under certain of the provisions of Section 133. That is the reason why we want our constitutional rights to be protected because since 1971, provinces seem to be backtracking as regards to their commitments to constitutional protection of minority language rights.

That is why we state that Section 133 should apply at least in Ontario, but also to a number of other provinces.

Mr. La Salle: I feel that the federal government should encourage provincial governments to set up education in both

[Page 37]

official languages. Would you be in favour of trying to convince provinces to enshrine this right or would you say that the federal government should oblige provinces do so?

The Joint Chairman (Mr. Joyal): Mr. Maldoff.

[Text]

Mr. Maldoff: I am sorry, could you just clarify the question? I am having difficulty hearing.

[Translation]

The Joint Chairman (Mr. Joyal): Mr. La Salle.

Mr. La Salle: I will try to be clear. Would you say that the federal government should force provinces to implement Section 133 especially the provinces of Ontario and New Brunswick, even

SECTION 133, LANGUAGE RIGHTS

though other provinces may have rather large Francophone communities, or would you prefer to see the federal government try to convince the provinces?

Are you in favour of coercing the provinces or trying to reason them?

The Joint Chairman (Mr. Joyal): Mr. Maldoff.

Mr. Maldoff: Thank you, Mr. Chairman.

Neither of our associations has the mandate to advise you on the things to be used by the government to protect the rights of Canadian citizens.

We have come before you for the sole purpose of making a number of very clear and precise representations. Our groups are the most directly involved with the linguistic question in Canada. The time has come for Canadians to show in a concrete manner that they really mean it when they say that Canada is built on two languages.

I do not quite see how groups representing minorities can speak about forcing any level of government to do anything at all.

Simon De Jong, Eric Maldoff, & Casper Bloom (Council of Quebec Minorities), & Yves St-Denis (President, Association canadienne-française de l'Ontario), p. 39

Mr. de Jong: [...] The first question I would like to direct concerns a quotation from today's paper, where the paper was quoting Premier Davis as saying that extending Section 133 of the British North America Act to Ontario would not really give anything to the French minorities in Ontario, would not give anything new. He suggested it would only duplicate services. Would you like to comment on that quote from the Premier?

Mr. Maldoff: I would like to seek your indulgence. Please understand that we are two groups presenting jointly here. When a question is posed it may take a moment to decide who will answer the question. Please be assured you have not left us stumped by the delay, I would like to ask Mr. Bloom who has helped in the preparation of our brief, to handle that question.

Mr. Bloom: The comment of Mr. Davis, which was picked up in *Le Droit* has led to a politically charged question which you have put to us; and we cannot answer anything for Mr. Davis nor for the Conservative Party of Ontario or others who might have a word to say on that. However, I would like to say that I am not in agreement with Mr. Davis.

We, in our memoir here, suggested for good reason, that Section 133 or the equivalent of Section 23 of the Manitoba Act. be entrenched in the constitution. We feel very strongly that the rights contained in Section 133 of the British North America Act be entrenched.

Now, in our brief we say that they should be extended at least to New Brunswick and Ontario. By that we mean that if some formula could be found for extending it to other provinces, perhaps as a certain proportion of the population was reached by the francophone minority, that the same right would be extended automatically to that province. That is one possible formulation. There

SECTION 133, LANGUAGE RIGHTS

are others, perhaps. But we feel strongly, in any event, that Section 133 should be entrenched and should be extended to Ontario and New Brunswick.

When Mr. Davis says that there is nothing new as far as Ontario is concerned in having it entrenched, I feel he is quite

[Page 40]

wrong. It may be that in some instances there is merely a symbolic significance if, as he says, most of what we are asking for in Section 133 has already been accomplished in Ontario or in the process of being accomplished, then that is true: a lot of what is in Section 133 has been accomplished in Ontario, and we applaud Premier Davis and the Ontario Government for doing so. However, if that is the case, what have they got to lose in accepting the entrenchment of Section 133, even if it means, perhaps, suggesting that a transitional period be allowed for it to be implemented.

[Translation]

The Joint Chairman (Mr. Joyal): Mr. St. Denis.

Mr. St-Denis: Yes, Mr. Chairman. The symbolic significance must also be taken into consideration. For those with Latin blood, this symbolic significance remains important. The franco-Ontarian people would feel proud and, in the final analysis, we might even stop complaining that we are sometimes dealt as second class citizens. Essentially, it would bring back to us our pride.

I might also add, Mr. Chairman, as a follow up to Mr. La Salle's question, that it is obvious that we would rather go the consultation route between the different levels of government than the enforcement one, but if we are led to believe that consultation will lead to failure, then I am all in favour of enforcement.

[...]

Mr. Maldoff: I am sure, monsieur St-Denis will have something to add to what I am going to say. But from the point of view of an anglo-Quebecker who has been looking into this question and vitally concerned with it, we feel we have heard the Government of Ontario on repeated occasions, as recently as Tuesday a week ago when Mr. McMurtry spoke in Montreal, declare the firm commitment of the province of Ontario to move expeditiously towards improving French-language services in Ontario, particularly in the areas touched by Section 133.

If Ontario is in fact moving in that direction—and it seems that it is, then certainly the Government of Ontario would be well aware of the reasonable deadline within which it might be able to meet the full services required by Section 133.

[Translation]

The Joint Chairman (Mr. Joyal): Mr. Levesque.

Mr. Levesque: Mr. Chairman, the Honourable Member is right in saying that a lot of progress has already been made in Ontario to meet Section 133.

SECTION 133, LANGUAGE RIGHTS

[Page 41]

In the last three years several acts have been amended, for instance, in the area of justice, the burden of proof legislation in Ontario, the Juries legislation, the Adjudicator Act, etc., so that by giving one or two years as a transitional period for implementation, we might be able to meet the full services required by Section 133.

Certainly, franco-Ontarians are reasonable people. If the constitutional Act of 1980 were to take effect next July 1, we would not expect in a month to have the whole gamut of the legal services that would have to be set in civil cases in Ontario and other fields where the use of French has barely started.

We are willing to show reasonable patience provided we get a formal commitment that our rights will be recognized in the constitution.

We are willing to show our good will as far as practical details are concerned. We have been very patient, I would even say too patient until now in fighting for our rights; but now we want the government to give us a constitutional commitment.

Simon de Jong & Eric Maldoff, p. 43

Mr. de Jong: Yes, my last question, Mr. Chairman. How important is it to Quebec that Section 133 be extended to Ontario for the people of Quebec, for the majority, for the French people of Quebec, the symbolism and the importance that they would attach to this.

The Joint Chairman (Mr. Joyal): Mr. Maldoff?

Mr. Maldoff: I cannot emphasize this strongly enough how important the inclusion of Section 133, granting rights in the legislature and courts of Ontario is to the French speaking people of Quebec. We have recently lived through an experience, and I should say, we are trying here today to speak in a positive light, but we have recently lived through a very divisive experience in Quebec, a very difficult experience. It seems that many Canadians are forgetting about the experience that we have recently lived through. One of the questions that was most difficult to answer was when a French speaking Quebecer would say, why should I be part of this country if I do not feel at home in this country. It is essential that English and French speaking Canadians feel at home in Canada, and a major step in that direction would be the guarantee that in areas which are most crucial to the survival to the two linguistic groups and that is access to courts, access to justice and the legislatures, that both these groups feel secure and confident.

Jean Lapierre, Casper Bloom, & Yves St-Denis, p. 43

I am getting to the substance of your presentation as such, concerning your recommendations one, two and three. I have put them all together because recommendation one states:

[Page 44]

SECTION 133, LANGUAGE RIGHTS

Any person should be able to speak in English or in French during the debates of the Canadian Parliament or any provincial legislative assembly.

And the third one reads:

Any person being the object of legal proceedings which could result in its imprisonment, should have the possibility that his trial be held in English or in French.

In fact, one and three are found in the existing section 133.

I would like some clarification. Are those two elements a minimum for all the provinces, whereas the complete Section 133 should only apply to Ontario and New Brunswick, because the three of them seem to intermingle.

Mr. Bloom: In answer to your question, Mr. Lapierre, our aim on point number one concerning the parliamentary debates, is that it touches all the provinces including the federal parliament, of course. So it does cover all the provinces.

Concerning suggestion number two, or recommendation number two, Section 133 should only apply to four provinces, we say to at least four provinces. So for the other provinces, concerning the condition of Section 133, others than the debate in the provincial legislatures it should only apply to these four provinces.

Concerning the third recommendation, it also should apply to all provinces and to the Parliament because it is said:

Concerning the freedom of the individual, where imprisonment is possible as a sentence on a violation, during a trial each individual, Canadian citizen or not should have the right to speak in English or in French.

The Joint Chairman (Mr. Joyal): Mr. Lapierre.

Mr. Lapierre: Thank you. I would like to get back to Section 133. I read with great interest the telegram that the Council of Minorities sent to the Minister of Ontario and I would like to congratulate you on it, in hopes that other groups similar to yours and just as representative will do the same.

I do not know if you heard the presentation made by the Minister of Justice, but I think that all the members of our Committee are very interested in this question and would, ideally, prefer that this be done by the different legislatures. I know that you do not want to deal with the methods but rather with the results; however, I would like you to know that our position now is that we would prefer the different legislatures to directly express the will to do this.

I know that that is the situation in New Brunswick. But what do you think is Ontario's position right now? Of course, Mr. Davis made a statement earlier . . . but since he said that it will not change anything...

SECTION 133, LANGUAGE RIGHTS

Mr. St-Denis: Mr. Chairman, through you to Mr. Lapierre, if you want to know what our feelings about this are, I will answer: yes, we believe that as far as New Brunswick is concerned, it does not seem to be creating any great problems, and Manitoba's legislature contains Section 23. Therefore,

[Page 45]

once again, the problem is with Ontario. Also, we have the clear impression that the Ontario government will not be interested in agreeing to this or even in negotiating along those lines. This leads me to believe that if we cannot come to an agreement, it must be imposed.

The Joint Chairman (Mr. Joyal): Mr. Lapierre.

Mr. Lapierre: If that is the case, do you mean that the Parliament of Canada should be the one to impose it?

Mr. St-Denis: Yes, Mr. Chairman, by entrenching that right in the Constitution.

Senator Asselin, p. 49

Senator Asselin: I just have five minutes, then, to finish off the time allotted to my colleague, Mr. La Salle. Mr. Chairman, before addressing myself to the witness, I would like to point out to my friend, Mr. Lapierre, that we, on our side of the House, have no lesson to take from him as far as section 133 is concerned. At the federal-provincial conference held in September, it was the Prime Minister of Canada himself who removed section 133 and said:

I no longer demand that Article 133 be applied to Ontario.

[Page 50]

Listen, it is the Prime Minister of the country who decided that and declared it during the conference.

Therefore, as far as section 133 is concerned, Mr. Lapierre has no lesson to give us and if an official motion is brought before the Committee, you will see which way we vote.

I must first of all congratulate the francophone of Ontario who are waging an extraordinary battle, for which you have the support of the francophones and French Canadians, of Quebec. I would like here to repeat what I said yesterday to another group which appeared before the Committee. Of course, the anglophones of Quebec do not have as much merit as you because, as we have said it several times already, they constitute the most well treated minority of the country. I would like once again to take to witness my friend, Mr. Mackasey, who said that when he was an M.P. in Quebec, he found that he was even well treated by those member who were "péquistes".

Senator Asselin, Gérard Levesque, & Yves St-Denis, p. 52

Senator Asselin: Of course. But I would like to raise a point of order here. I am discussing the legal aspects of the matter, and not facts.

SECTION 133, LANGUAGE RIGHTS

I think I said earlier that I believe these rights should be granted to francophones in Ontario by virtue of section 133. I made that statement publicly. But it is the legal matter that interests me here. You would like us to completely change the legal status of the Constitution for the sole purpose of having the federal government infringe directly on provincial rights, even if they are important for minorities.

The Joint Chairman (Mr. Joyal): Mr. Lévesque.

Mr. Lévesque: Mr. Chairman, section 93 of the British North America Act gives religious minorities control of their own schools; in practice this has benefitted the minority language group of Quebec. We want equivalent rights in Ontario so as to have control over our own schools.

The Senator has raised a legal point. Constitutional experts have already examined the constitutionality of adding linguistic rights rather than restricting the rights of separate school boards.

Experts such as Peter Hogg from Osgoode Hall have assured us that adding linguistic guarantees would in no way restrict the rights to a religious education.

If you want me to I will leave with the Clerk copies of these opinions which show that it would be quite possible for Ontario to have the same provisions as Quebec where under section 93, the majority have given certain rights to the minority. This applies to the Protestant minority in Quebec; but the fact nevertheless remains that the majority of English schools in Quebec come under the Protestant school boards that are controlled almost exclusively by the English-speaking minority of Quebec.

That is what we would like to have in Ontario with a constitutional guarantee that franco-Ontarians will have the right to control their own schools.

Mr. St-Denis: We are demanding equal rights not more rights.

-----o0o-----

November 20, 1980: [David Crombie](#) & Dennis Fynn (Mayor of Etobicoke, National Executive, Federation of Canadian Municipalities), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 9, then scroll to p. 21)

Mr. Crombie: [...] My question to you relates to the current situation with respect to Section 133 of the British North America Act Section 133 of the British North America Act, as you know, Mayor Flynn, refers to linguistic rights in relation to the Parliament of Canada, English and French, the Parliament of Canada, in the Province of Quebec and the Province of Manitoba. There are some who take the view that that section should include at least Ontario and New Brunswick and, therefore, take account of the 90 percent of the francophones who live outside of the Province of

SECTION 133, LANGUAGE RIGHTS

Quebec. They regard as inequitable the current situation where only Quebec and Manitoba carry out the responsibilities with respect to the courts and the legislature for bilingualism.

I wondered what the view of the Association was. Do they regard the current situation as inequitable?

Mayor Flynn: Yes of course they do. This is one of the reasons why this attitude was adopted in 1978 as a national feeling expressed through the Federation of the things that are required.

Mr. Crombie: You therefore would like to see included in Section 133, both New Brunswick and the Province of Ontario?

Mayor Flynn: Yes.

-----oOo-----

November 21, 1980: Gilberte Proteau (President, Association franco-manitobaine) & Robert Bockstael, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 10, then scroll to p. 34)

Mrs. Proteau: Canada's history in any case is not unique in this area, in the fact that majorities have not always been particularly favourable towards minorities. That is the first thing.

I think that having recourse to the courts is normal, and I cannot help adding here that Mr. Lyon, who is so strongly against the entrenchment of linguistic rights on the grounds that legislative assemblies can legislate properly for Manitobans, would like himself to take the federal government to court at the present time to protect what he considers the rights of his province; he himself is now granting himself a right which he wants to refuse us as a minority. That is rather strange.

Mr. Bockstael: That is right. In one or in several of the recommendations which you make, you would like to make Manitoba what might be called an exception. But this exceptional status would arise from the fact that Manitoba had a very special status under the terms of the BNA Act in 1867 and 1871, according to Section 133 of the British North America Act as well as the Manitoba Act of 1870.

J.E. Magnet (Counsel, Société franco-manitobaine), Senator Connolly, Robert Bockstael, Lorne Nystrom, & Lucille Roch (General Director, Société franco-manitobaine), p. 35

Mr. Magnet: [...] So it is true we would continue this, we do not see any other solution, I am quite attracted myself, personally, to applying

[Page 36]

SECTION 133, LANGUAGE RIGHTS

Section 133 to Ontario and New Brunswick and as the CCLA has said. to other provinces as well. We are practical. I would be in favour of this but La Société Franco-Manitobaine does not want to speak on behalf of the needs of other francophone communities. we leave that to such communities, We think that the Manitoba exception as distinct from the other exceptions, we require entrenchment of Sections 17 to 19 with respect to Manitoba.

Now, you say, secondly, that Section 23 of the Manitoba Act gives us these rights, and that is true. Not exactly because the protections of Sections 17 to 19 are somewhat broader in the proposed resolution, At Section 17: everyone has the right to use English and French in any debates or other proceedings of Parliament, such as this proceeding. Under the Manitoba Act we would not have the right, for example, to come here and use either official language before this committee. There are similar exceptions throughout these language provisions. So they are broader.

It is not because they are broader that is the principle thrust behind our submission that they be entrenched with respect to Manitoba, it is because Manitoba requires these protections, first by entrenchment in the charter subject to an enforcement clause. We cannot enforce Section 23 of the Manitoba Act or at least have not been able to so far. And, secondly, to put them beyond the amending powers.

Now, you say in that respect: Section 21 of the proposed resolution preserves Section 23 of the Manitoba Act and that is true, it does. but Sections 34 and 43 of the proposed resolution create a difference in how it can be amended, that is what we are afraid of.

Senator Connolly: Would you say that again?

Mr. Magnet: Yes, surely. Sections 34 and 43 of the proposed resolution are the amendment provisions, and these provisions provide a machinery for amendment of the constitution of Canada, including Section 23 of the Manitoba Act. with respect to some but not all provinces. if you want to amend the Manitoba Act now, under the Foray and Blakey decisions, you will have to go to Westminster. These Houses do not have the power and the Manitoba legislature does not have that power. That is part of fundamental constitutional law reaffirmed by the British North America Act of 1871 and it is beyond the power of any legislature in this country.

Section 34 puts it within the power of these legislatures and not just puts it within the power of these legislatures. it takes rights, which are minority rights, which are constitutionally entrenched, not for all time but for some time anyway until there is a very stiff political will to amend them. it makes these minority rights dependent upon the simple will of the majority. They can be gone whenever, not even the legislative assembly of Manitoba says, but the Government of Manitoba says if it gets the consent of the majority of parliament. That is not fair, it is not logical, it is absurd from the point of view of constitutional law if you entrench a right, The reason for

[Page 37]

entrenching it is to make it difficult to get rid of, not to make it an ordinary enactment easily amendable.

So in that risk back we take exception to Section 34 and Section 43, and I must say for myself, I think the draftsmen simply overlooked the Manitoba Act. I think it is a simple mistake. I might be

SECTION 133, LANGUAGE RIGHTS

wrong but I think it is a mistake and I think the responsibility of this Committee is to examine the question.

The Joint Chairman (Mr. Joyal): Mr. Bockstael.

Mr. Bockstael: I appreciate that you are pointing out these deficiencies, if we can call them that, or oversights, and that this Committee should certainly look at it along with the draftsmen.

I would like to correct a slip of the tongue. When I asked a question of your attitude and you gave your personal attitude about Ontario and New Brunswick, I said: would you want the federal government? I meant: would you want the adoption of the constitution and parliament to impose linguistic minority rights to the Government of Ontario and New Brunswick. And I would like to clarify that inadvertent use of: the Government of Canada; or the federal government.

I think that the points that you have flagged are certainly important ones and have to be taken into consideration in the context and I am sure that this is one of the matters that this Committee will address itself to and I thank you for your representation.

[Translation]

The Joint Chairman (Mr. Joyal): Thank you, Mr. Bockstael. *[Text]* Mr. Nystrom.

Mr. Nystrom: Just following up Mr. Bockstael's point, I think we can solve the problem Mr. Magnet mentioned by including all language rights in the charter. Right now, Section 23 of the Manitoba Act is left out, and Section 133, which is applicable only to Quebec, is left out, and if we extend those in any other provinces, hopefully at least Ontario and New Brunswick, we could easily get around that problem by including all these language rights in the charter because Sections 16 to 21 are now in the charter and if you look at Section 50 you will find out the only way we can change the charter of rights is not bilaterally with the legislature in one province and Parliament, but by going through the amending formula and I think that is something all of us could agree to and certainly I think it was the intent of everybody here.

[Translation]

If you will accept my apologies for my Saskatchewan accent, since I am not French. I would like to say that I am very grateful to the Société franco-manitobaine to have come here this morning. I would just like to ask you one or two questions.

In your brief, I find these words:

Today, despite the decision of the Supreme Court of Canada, the Manitoba legislature is still denying Franco-Manitobans the protection of Section 23 of the Manitoba Act.

Did you discuss this issue with the Government of Manitoba? If not, would you need more time to try and give more strength to the Manitoba Act, through Section 23, or do you

[Page 38]

SECTION 133, LANGUAGE RIGHTS

think, from your own experience in that province, that there are other things that we should enshrine in our constitution?

[Text]

Mr. Magnet: Well, I can say that the Associate is considering its legal position after the Foray decision and it has not yet come to a view as to what the appropriate legal recourse is. I can tell you frankly in the last session of the Manitoba legislature, 116 bills were passed, nine of them were in French, so we feel behind by 106 acts in the last session from what the constitution of Canada requires.

Now, these are not easy matters. The Government of Manitoba takes the view that the constitution does not command the impossible and we agree. How this should be implemented, what is reasonable, what the constitution requires is a novel proposition in constitutional law and the associate is considering its position.

We think, however, that with respect to the collective rights here, our enforcement clause is a good step. We think it gives recourse to the courts and it allows the courts to feel comfortable in making injunctive or mandatory orders against the government, and of course this has been found necessary in other federations with a written constitution. Sometimes the feeling of the electorate is that this is rather unseemly for judges to go ordering the legislature around. We think it is an inevitable development in constitutional law, and we think that enshrinment of the principle in the constitution is what is required.

Furthermore, I just note that under the international covenants on civil and political rights, 1966 to which Canada is a signatory and which Canada has ratified, Canada has the obligation to ensure that, this is the language of the covenant, to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.

[Translation]

Mrs. Roch: Last winter, after the decision of the Supreme Court, the Société franc manitobaine met with the provincial government to discuss interpretation of the decision. At that time, it appeared quite clearly that the government was limiting its interpretation to a bare minimum.

As Mr. Magnet has just mentioned, some steps have been taken: for example, we have been told that some 500 pages of legislation have now been translated. This week, we have been allowed to table our brief to the provincial government in the French language.

However, as far as more material steps are concerned, such as education services to the community, the political will to implement them has not yet found an expression.

Mr. Nystrom: A last question, Mr. Chairman.

As you know, my party intends to move an amendment so that Section 133 of the British North America Act applied

[Page 39]

SECTION 133, LANGUAGE RIGHTS

Ontario and New Brunswick. Monsieur Magnet [Text] said that he did not want to comment on what Franco-Ontarians may want, [Translation] But I would like to ask him a question.

If Section 133 is applied to Ontario, do you think there is any benefit in that for the Franco-Manitobans? In that case, the French-speaking minorities in Ontario would benefit from the same status as the English-speaking minorities now have in Quebec.

The Joint Chairman (Mr. Joyal): Mrs. Roch.

Mrs. Roch: Of course, the Société franco-manitobaine would undoubtedly support any legislation which could lead to a strengthening of the French language in Canada.

However, we do not want to come here to comment on the situation in Ontario, since we are mainly representing the interests of Franco-Manitobans.

Of course, any step to extend the French fact in Canada would be beneficial to franco-Manitobans, since it would allow a greater mobility for them in the country. You know that we are not now in a position to leave Manitoba, very easily. So, this extension of the French fact in Canada would be an improvement.

Bryce Mackasey & J.E. Magnet, p. 40

Mr. Mackasey: [...] Before you answer that, and I am sure you have lived all your life in Manitoba and understand what I am saying, but whether we like it or not, English speaking Quebeckers are a minority in that province. We never felt like minorities. We are the best treated minority, now that we are clearly identified as a minority, in this country. I said when I was in your province at the request of Mr. Pearson in 1963 and 1964 and 1965, that it would be a wonderful country if the Franco-Manitobans could have the same rights and privileges that the English speaking Quebeckers have. And they flowed from many sources, not only in 133 insofar as the courts and legislature, they flowed equally from the attitude of the people in Quebec, I used to say to Rene Levesque when I was in the Quebec National Assembly we are going to have a helluva time to separate when you realize the great number of mixed marriages in that province. I used to joke with Mr. O'Neill and Mr. Burns along those lines.

I am leading to something. I am also aware of how fragile freedoms are, as you mentioned.

I have lived in Quebec, sat in the Quebec Assembly for 18 months when Bill 101 was imposed on the people of Quebec. In many ways its objective is a desirable one, in many ways it is a very discriminatory bill. It removes, along with Bill 22, English as an official language in that province. It forbids English merchants to put an English or bilingual sign over his door. It ended the rights of the English-speaking minority in Quebec to deal in English with its own government. And it rightly or wrongly at the moment, and I think rightly, believes that it too leaves freedom of choice in Quebec in the field of education, so that a reasonable number of new Canadians coming into that province would opt for the English school system.

SECTION 133, LANGUAGE RIGHTS

Nevertheless, despite that conviction which was expressed by the witness. those of us who lived in that province are prepared to live with 23(1) which limits the rights of new

[Page 41]

Canadians coming to Quebec. I doubt if new Canadians are prepared to accept that, and I have seen it stated over and over in this Committee. I must remind you too that Bill 101 denies the right, and I think you made the point, of English speaking Manitobans going into that province and their children being educated in that language as French Canadians are denied in other provinces, but the constitution that we are proposing would at least put an end to that abuse.

But I must say that Senator Connolly has made the point that your proposal if carried to its ultimate would increase regionalization, put a completely different dimension, maybe the right one as far as Senator Connolly is concerned, on the purpose of the constitution. It would strengthen regionalization. In the ease of mobility if you carried that principle to its full extent it would give credence to Premier Peckford's principle that there should not be mobility, and I am just afraid that by suggesting freedom of choice only for Manitoba but not for the English minority, and I emphasize the word minority. maybe not an endangered species yet, but in time will be, I think that you are not quite biting the bullet that I had hoped you might do.

The Joint Chairman (Mr. Joyal): Mr. Magnet?

Mr. Magnet: I cannot speak for the anglophone minority.

Mr. Mackasey: But I can.

Mr. Magnet: You can, not only can but have the duty to in this Committee, to listen to them and to propose constitutional policy with respect to the development of that community. I do not want to do that.

I just would like to add a personal note to what you have said. I lived in Quebec for 10 years as an anglophone. Having the privilege to work with the Franco-Manitoban group has made my views change drastically. Franco-Manitobans came into Confederation in 1870 as a majority with constitutional guarantees. Their status was attacked in 1890 by unconstitutional legislation. They diminished. They now labour under an assimilation rate of 54.3 per cent. They are dying out. I know what the Quebecois fear to become and I can understand, although I would not adopt the position, I can understand the view in Quebec that this must not be allowed to happen to Quebecois. It is only a personal observation and I am only saying that I can understand it. I do not necessarily advocate it.

On the regionalization point you have made. I do have something to add. I do think that the individual solution which has been our constitutional tradition for almost 115 years with respect to collective rights is the answer. I do not see another answer.

The proposed resolution, Section 23, proposes a solution with respect to citizens of Canada whose, first language learned and still understood is that of the English or French linguistic minority

[Page 42]

SECTION 133, LANGUAGE RIGHTS

et cetera. This is focussed on Quebec. This is focussed only on Quebec. There is a little back wind that spills off of this thing from the point of view of other francophone minority communities outside of Quebec. And in Manitoba that back wind is a hurricane. It means that they can continue to be subjected through legislation from the Manitoba government which diminishes their status further.

-----o0o-----

November 24, 1980: Bryce Mackasey & Joan Dougherty (Chairman, Protestant School Board of Greater Montreal), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 11, then scroll to p. 19)

Mr. Mackasey: I just wanted to ask the witness if the critical path would include Section 133 for Ontario and New Brunswick? Your critical path leading to freedom of choice, in other words, the time frame, would you think it desirable to couple that with a similar provision to extend speaking of the other languages in the courts and the legislatures of Ontario and New Brunswick?

Ms. Dougherty: I think so. It is obvious we cannot do things overnight but if we can state some goals and time frames and incentives and encouragement and say this is where we want to go, then maybe gradually everybody will get on the bandwagon. Possibly that is the way we should attack the problem.

-----o0o-----

November 25, 1980: Roch La Salle, Irene Chabot (President, Association culturelle franco-canadienne de la Saskatchewan), & Claire Doran (Political Adviser, Association culturelle franco-canadienne de la Saskatchewan), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 12, then scroll to p. 14)

Mr. La Salle: At one point, Mr. Nystrom made comments and recommendations to the effect that Section 133 of the British North America Act, which now applies to Quebec and Manitoba, also apply to Ontario and New Brunswick.

Do you think that he was wrong to leave out Saskatchewan?

I would like to know what your position is on this?

Mrs. Chabot: The Associations position is that this is precisely the area where they seem to want to invoke the “where numbers warrant” principle. If certain provinces are named, for example, Ontario and New Brunswick, what happens to the others?

SECTION 133, LANGUAGE RIGHTS

We think this should apply to all provinces, particularly in this day and age.

Mr. La Salle: Do you think that it would be physically and financially possible, since you represent only 3 per cent of the population of Saskatchewan, to provide education in French throughout the province, or should we recognize that there are pockets of Francophones where it would be easier to teach in French? Do you think that French could be taught all over the province for just 3 per cent of the population?

Mrs. Chabot: Anything is possible when you really want it, but I will let Claire answer the question.

Miss Claire Doran (Political Adviser, Association culturelle franco-canadienne de la Saskatchewan): At the beginning of the brief, when we described the French-speaking population in Saskatchewan, we wanted to draw your attention to the fact that not only do we represent 3 per cent of the total popula-

[Page 15]

tion. but that we live in small communities scattered across the province. I believe that Mr. Nystrom is aware of the situation.

In education as in . . .

Mr. La Salle: Inaudible.

Miss Doran: There are no Francophones in his riding, but I believe Mr. Nystrom is aware of the situation in the province.

In education as in other areas, we favour a realistic type of bilingualism. We do not want everything in the province to be bilingual, but we do want bilingual services to be available to French-speaking communities. We could, for example, have French schools where there are Francophones and thus have control over education at the community level.

It is more of an administrative problem; we have to decentralize our institutions which, because they are regional, are controlled by Anglophones; we have to turn them over to the communities. It is not very realistic or practical, from a financial point of view, to make the whole province bilingual.

Florent Bilodeau (Director General, Association culturelle franco-canadienne de la Saskatchewan), p. 18

Mr. Bilodeau: If I might elaborate a little...

Mr. Nystrom, you asked whether we had any other recommendations to strengthen our case.

I think that what is essential for us is that the Constitution recognize the principle of two founding peoples; as well, you asked us earlier whether you expected Section 133 to be extended to all 10

SECTION 133, LANGUAGE RIGHTS

provinces. Of course. We say that in our fifth proposal in which we ask that the Northwest Territories Act of 1877, which recognized French as our official language, be included or retained.

To come back to the second proposal, you will no doubt realize that there we go even further than Section 133. We say that the Canadian Constitution should oblige our provincial governments as well as the federal government to guarantee equal status for the French-speaking population. In other words, they must provide us with the mechanisms, the possible or necessary structures within the province. So you can see that we go much further.

You made a comment on the question of the Official Languages Act. Unfortunately, this act is limited to services provided by the federal government and to education; in Saskatchewan, structures at the level of federal institutions are not what are needed to allow us and our young people to live in French since language services do not depend that much on the federal government. Our services are at the provincial level, so it is at that level that the provinces should feel obligated to serve their population, the daily services which a Francophone in Saskatchewan needs.

Eymard Corbin & Claire Doran, Irene Chabot, & Florent Bilodeau p. 19

Mr. Corbin: I understand your point of view quite well. but I did want more clarification, more explanation for some people who still do not understand.

[Page 20]

[Translation]

Last week the Honourable Duff Roblin, Senator Roblin who is a former Premier of Manitoba, directed a request to Mr. Chretien that Section 133 of the British North America Act be extended to provinces other than Manitoba and Quebec; this section touches on institutional bilingualism, legislative assemblies, and bilingualism in the courts. He said that that section should be extended at least to those provinces with a number, or if I remember correctly, he used the word proportion, a proportion of French speakers equal to the French-speaking population of Manitoba; he named Prince Edward Island, of course New Brunswick, and Ontario, and I think that he could have extended his example to Saskatchewan as far as the number of French speakers is concerned, because there are more French speakers in Saskatchewan than there are in Prince Edward Island at the present time.

As for Lorne Nystrom, he served notice on the committee that he intended to move a motion to extend the provisions of Section 133 of the BNA Act to New Brunswick and Ontario. As a New Brunswicker, I can tell you that Section 133 does very little for New Brunswick except at the symbolic level, because New Brunswick already has an official languages act which at the outset gives us considerably more than do the provisions of this proposed resolution.

Now could you accept having Section 133 of the Constitution extended to Saskatchewan, since you also seem to feel it has mainly a symbolic value. You say that the provisions of the Northwest Territories Act dealing with official languages should probably be extended, and you even ask why it is not included as an appendix. The answer provided by the Minister of Justice is that the

SECTION 133, LANGUAGE RIGHTS

Northwest Territories Act was enacted by the Canadian Parliament and is not a constitutional act from the British Parliament. That is why it is not appended. But to satisfy you, I do think that we would achieve the same result by extending the provisions of Section 133 of the present constitution to Saskatchewan. Would you agree with that initiative?

Miss Doran: Of course, I think we have already said that we agree. It was not mentioned as such in our brief because we decided on a different way of formulating our requests covering the same areas as the provisions of Section 133 and even going beyond Section 133. Because, as you yourself said, Section 133 deals with bilingualism in the courts and in legislative assemblies; as far as we are concerned, we claim to have the support of a good number of constitutional experts according to who we already have those two rights in Saskatchewan. The problem is that those rights have been flouted for the past 90 years; today we are beginning to take a serious interest in the way in which those rights could be re-established. However, it is obvious that extending Section 133 to

[Page 21]

Saskatchewan would, to all intents and purposes, from a layman's point of view, have pretty well the same effect, the same results.

Mr. Corbin: In any case, I for one would not hesitate to extend Section 133 to all provinces because the symbolic value of so doing is important in the present historical context. Obviously, it would be preferable that the provinces take positive action beforehand, that they obtain a resolution from their legislative assemblies to grant the federal Parliament total freedom to move in that direction as well.

What attempts have you made recently to have the governmental authorities in Saskatchewan accept your requests, the requests included in this morning's brief? I am sure that you maintain constant contact with the Premier of Saskatchewan. What reaction do you get from him: what excuses do you get from him explaining why he is not moving as rapidly as we would like to move at the federal level?

Mrs. Chabot: Yes, we have been in constant communication with our government for the past few months and even the past few years; but in any case, recently, over the past few months, we have met frequently, as frequently as possible, and we must say that while the government seems to listen to us, our cause is always being put off until later; in other words, the buck is always being passed. The buck is often passed to Ottawa and returned to our government, and there is a constant demand for supporting evidence, and "where numbers warrant" is often mentioned; that is why that phrase means nothing for us, and why we are offended to find that once again in this bill, in this proposed resolution.

As far as our government is concerned, you know as well as we do that our Prime Minister does not consider himself responsible for ...

Mr. Corbin: Which Prime Minister do you mean?

Mrs. Chabot: Our provincial Prime Minister.

Mr. Corbin: The Premier of Saskatchewan.

SECTION 133, LANGUAGE RIGHTS

Mrs. Chabot: To begin . . .

Mr. Bilodeau: Mr. Corbin, I might add that we have always said that it seemed that neither our provincial nor our federal government was prepared to recognize the fact that there are two very special or identical sections in the constitutional debate; I said section, I meant two parts; first, the discussion on the distribution of powers, which include resources. the economy, and what you will: there is the Canadian cultural fact and, as the provincial government stated when making its position known, we must not talk in terms of a bargain or a package. They are identical and Canadian duality must be recognized, For us. extending the application of Section 133 is secondary. What matters is recognizing Saskatchewan through the recognition of Canadian duality.

So, our second recommendation follows upon this question of extending Section 133. We state therein that governments

[Page 22]

should act in accordance with the Canadian reality, which is that we are two founding peoples whose cultures were enriched by the subsequent arrival of people from other countries.

To date, I would say that we have been meeting mainly and almost solely with the Attorney General who is also the minister responsible for inter-governmental affairs.

Before the end of 1980, we are scheduled to meet the Cabinet and to reiterate our position and our expectations of provincial representatives so that they realize once and for all that they are responsible for us and that they must stop making us depend entirely upon the federal government.

Bryce Mackasey & Irene Chabot, p. 25

Mr. Mackasey: [...] As there is not much time left, I would simply like to hear your opinion on the alternative proposed by Mr. Nystrom and by others two weeks ago of extending Section 133 and Section 23 of the Manitoba Act to include the provinces of Ontario and Manitoba. Do you agree or do you feel that this amendment should also include the Province of Saskatchewan?

Mrs. Chabot: In our opinion, these rights should not be extended to include Ontario and New Brunswick in particular, but all the provinces, without exception. There is no reason why they could not fall under those provisions. Neither Ontario nor New Brunswick would suffer from every other province being included in the resolution and it would be up to the provincial governments to do their share to make sure it was respected.

-----o0o-----

November 26, 1980: Jeanine Séguin (President, La Federation des Francophones hors Quebec), speaking in the Special Joint Committee of the Senate and House of

SECTION 133, LANGUAGE RIGHTS

Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 13, then scroll to p. 28)

Miss Jeanine Séguin (President, La Federation des Francophones hors Quebec): [...] The Charter smacks strongly of the status quo. Entrenchment of the right to appeal to the courts would not improve the status of Francophones outside Quebec to any great extent. Francophones outside Quebec are particularly outraged by the detestable handling of the language rights' clauses since the Constitutional Conference in September.

We are aware, very aware, of the bargaining in which the Premier of Ontario, Mr. William Davis, has indulged in in order to prevent his province from being subject to Section 133. To secure Mr. Davis' support for its patriation bill, the federal government has given in to blackmail. It is absolutely scandalous to see the rights of the Francophones outside Quebec thus reduced to mere political horse trading.

It is even more disgraceful to see Mr. Davis boast of being able to save his province from bilingualism in its legislature and courts, and to hear him say, before his supporters in the riding of Carleton East, that official bilingualism in Ontario would lead to a duplication of services and increase taxes. If this were really the case, why would the federal government not absorb the cost of institutional bilingualism in the provinces?

The most rudimentary logic shows the proposed Charter of Language Rights to be completely indefensible in its present form. How can the government claim to protect the rights of Francophone communities outside Quebec, while failing to submit Ontario and New Brunswick to the provisions of Section 133, especially when 80 per cent of the Francophones outside Quebec live in these provinces? Strategic considerations appear to take precedence over justice in this country.

Fortunately this weakness in the Charter of Language proposed by the federal government has not escaped the various interest groups which have appeared before this committee.

Among others, the Canadian Jewish Congress, the Commissioner of Official Languages, the Positive Action Committee and the Council of Quebec Minorities have deplored the fact that Section 133 is not being applied to Ontario and New Brunswick.

We believe that the members of Parliament and Senators on this committee must correct this error and propose an amendment which would immediately bind Ontario and New Brunswick to the provisions of section 133.

You must also ensure that section 133 is applied to all the provinces. The time has come to act, and for federal politicians

[Page 29]

to take that action. It is now or never, since it is very unsettling to note that recognition of French as official language in Canada is decreasing, not increasing. In 1971, seven provinces were ready to recognize French as an official language in their legislatures and courts. Today, this is imposed on only one province outside Quebec.

SECTION 133, LANGUAGE RIGHTS

Jeanine Séguin, p. 30

Miss Jeanine Séguin (President, La Federation des Francophones hors Quebec): [...] Our second recommendation, which I mentioned in our introduction, is that the principle of the equality of status of the French and English languages, as set out in section 133 of the BNA Act, apply to all the provinces, and that it apply immediately to Ontario and New Brunswick.

Our third recommendation, that the citizens have the right to use the official language of their choice before all judicial and administrative tribunals established by Parliament or by provincial legislatures.

Eymard Corbin & Jeanine Séguin, Donald Cyr (Director General, Federation des Francophones hors Quebec) & Senator Asselin, p. 38

Mr. Corbin: [...] Which brings me to the second part of the same question and that is why I put the following question to the witnesses: Faced with public opinion which seemingly now is ready to accept that in western Canada, and it seems to me a majority would accept it, how can we explain the resistance of the provincial premiers confronted with the extension of Clause 133 of the British North America Act to all provinces and how can we explain their objection to the entrenchment of language or school rights in a bill of rights?

Would you have any comments on that?

The Joint Chairman (Mr. Joyal): Miss Séguin.

Miss Seguin: Mr. Chairman, dear friends, I know there is an organization called the Canada West Foundation; one of my good friends on the board of directors of the Federation des Francophones is part of it, Mr. Gaston Renaud from Alberta.

I knew there would be a questionnaire in the fall of 1980.

Now here is what I can say about that. it all depends on who the questionnaire was sent to and secondly, upon the criteria used to establish the questions. You know, you put the questions you want to; so there are those criteria, and, thirdly, the context in which it was used.

Now, I am not casting any doubt at all the results or statistics you have just mentioned but I can however repeat what Mr. Francis Fox, the Secretary of State, said in his conference before l'Association canadienne-française de l'Ontario September 28 last. He said that in 1971, during a public opinion poll, that there were only 68 per cent of all Canadians who accepted both official languages across the whole country and that in 1980 a new public opinion poll had been taken and the percentage was not at 80 per cent.

Which just goes to show you, for the first part of your question, that the results of the poll can vary depending on who is reading the results and who is interpreting them.

[Page 39]

SECTION 133, LANGUAGE RIGHTS

Some politicians and public figures swear by your poll, while others say that it is not worth the trouble. I accept your poll as is, but in the fall of 1980, the Secretary of State told me something different at together.

As for the second part of your question, as to how to explain the resistance of western premiers, I am not sure that the premiers. . . You will excuse me if I give you my personal opinion, but I think that there is always fear of a political backlash. This applies to all provinces, no matter what government is in power, and to the municipal, provincial, and federal levels. This is understandable and I imagine there are reasons for it.

There is another way of explaining it. I think that all human beings are resistant to change and feel insecure about the unknown, the future. I think that people live from day to day. Take Newfoundland, for example, and I am not talking about its Prime Minister, but about Francophones outside of Quebec. Say that there are 1500 Francophones in Newfoundland. People might jump to the conclusion that everyone will want the provincial government to be completely bilingual as of tomorrow morning. You understand? There is that fear.

There are a number of reasons for this. As I said, there is the backlash and other political considerations. Sometimes trade-offs are made. Maybe this type of bargaining is normal, I am not a politician, so I do not know. I do not belong to any political party; I represent Francophones outside of Quebec. Beware, gentlemen, because it is not the Liberal party, the Conservative party, or the NDP that you are dealing with. It is the Francophones outside of Quebec! That is the only party I belong to and that is why I am convinced that, if this proposal is not being accepted, it is perhaps because Canada is a big country and there is a lot of room for misunderstanding on the part of those involved. There is also a fear of the unknown, which could be a factor.

The Joint Chairman (Mr. Joyal): I believe Mr. Cyr has something to add.

Mr. Donald Cyr (Director General, Federation des Francophones hors Quebec): Yes.

As a Franco-Albertan, I think that if the poll had been taken several years ago, the figures would have been even lower. I think that the programs the federal government has encouraged the provinces to provide have, to a certain extent, improved the attitude of most citizens across the country. When you quoted those figures, I was surprised to see that we have already reached 50 per cent, which is not too bad. It is time to move. After all of the politicking that has been done at

[Page 40]

our expense, because of the cost, because of Quebec, et cetera, I think we should go to enshrinement, And by this, I mean something better than is provided for in section 23. If enshrinement were properly done, it could eventually become a tool for our provincial governments, because the political risks would be greatly diminished if their actions were covered by the constitution.

To me, Mr. Corbin, the figures you quoted are encouraging, because my impression as a career academic in this province is that the figures were lower a number of years ago.

SECTION 133, LANGUAGE RIGHTS

Mr. Corbin: You may or may not agree with me, but I interpret these figures as meaning that the circumstances which prevented provincial politicians from taking concrete action over the past few years have completely changed and that the massive support of a right-thinking portion of the population—because 50 per cent is massive—should give them the courage to accept section 133 for all of the provinces.

Would you draw the same conclusions?

Miss Séguin: Despite the richness of the French language, there is no word that could properly describe how grateful Francophones outside of Quebec would be to those around this table if everyone were to decide to become fully involved in this project, which will change the future of our country. I do not think that there would be a word in French to express our appreciation if everyone wanted to extend section 133 to all of the provinces.

The Joint Chairman (Mr. Joyal): This will be your last question, Mr. Corbin.

Mr. Corbin: Reference was made to the Premier of Ontario and to Mr. Hatfield, who I believe accepts section 133, but would like us to impose it on him. I do not much like this way of proceeding. Premier Hatfield seems to be saying that he is for section 133, but wants us to impose it on him. Mr. Davis, the Premier of Ontario, seems to be saying that he does not want section 133, but would live with it if the federal Parliament decided to impose it on him. He could then tell his constituents that he had nothing to do with it, that he opposed it and that Mr. Trudeau was on his side, but that it was imposed on him by Parliament. Do you think that politically, for Premier Davis or any other premier, be he red, blue or spotty grey...

[Page 41]

An hon. Member: NDP!

Mr. Corbin: NDP. It is just an example.

Senator Asselin: Spotty grey!

Mr. Corbin: Spotty grey!

Do you think these politicians are being honest? Do you think we should believe them when they say that, for them, section 133 will mean defeat in the next provincial elections?

Do you believe that?

Miss Séguin: I do not want to make value judgements, because I have no right to judge these people's intentions. But I would like to say that the provincial and federal governments, no matter what party they belong to—excuse me if I repeat myself, but in the old days we used to learn by repeating—must be willing to compromise and act in the interest of Francophones outside of Quebec. That is all I am asking.

I am not asking for much. I have faith in the integrity of those who have agreed, I imagine of their own free will, to sit on this committee. This may sound naive, but I am completely sincere.

SECTION 133, LANGUAGE RIGHTS

Senator Tremblay & Jeanine Séguin, p. 43

Senator Tremblay: That was my first question. Thank you.

I have a second one on Section 133. which is in a way related to comments made by my colleague, Mr. Corbin.

On page 7 of your brief, and several times in the brief, you say:

Francophones outside Quebec are all too well aware of this kind of double standard.

I think that that principle underlies your proposal that there not be a federal standard with respect to Section 133 and that all provinces should be required to implement it. On principle, you think that Section 133 should be extended to all of the provinces.

Miss Séguin: Every individual, Mr. Chairman, must strive for an ideal. Our ideal is that Section 133 should apply to all of the provinces and I think that our friends, the Franco-Saskatchewanans expressed this very well when they appeared yesterday.

What we want, in the short term, is that it immediately apply to Ontario and New Brunswick.

Senator Tremblay: Fine.

But the principle should apply to everyone.

Miss Séguin: The principle should apply everywhere.

Senator Tremblay: Fine.

As long as it does not apply everywhere, there will be a double standard.

Miss Séguin: May I answer?

Senator Tremblay: I would like to finish, if you do not mind.

Supposing that, for one reason or another, the proposed resolution is passed as it now stands, that through some oversight, Section 133 continues to apply only to Quebec and Manitoba. If the Constitution imposes Section 133 on Quebec and Manitoba and exempts the other provinces, there will unavoidably be a double standard.

Would you go so far as to say that, to avoid a situation where there would be a double standard, Section 133 should no longer apply to the two provinces that are now subject to it, so that everyone would be in the same position? Do you think that it should apply either to everyone or to no one? When Mr. Chrétien appeared before the Committee, he told us that the reason it was not imposed in Ontario is that the

[Page 44]

SECTION 133, LANGUAGE RIGHTS

freedom of the provinces had to be respected. This would mean that the freedom of Quebec and Manitoba would be restored if the other provinces did not apply Section 133.

This is perhaps somewhat theoretical, but I think it does describe a real problem.

How do you feel about this?

Miss Séguin: I could make a long speech on acquired rights, but I would rather repeat a comment I made earlier.

I get the impression that there is a lot of political intrigue surrounding certain questions and I would like to avoid that aspect this afternoon.

I am not here to judge anyone and I do not want to get involved in politicking. Francophones outside of Quebec have been victimized so often in the past that I do not want to be the victim of members of the Joint Committee of the Senate and the House of Commons. I am not here to be a victim.

I want to answer your questions and help to the best of my ability. I want to be asked questions intended to improve the proposed resolution. The federation does not want to be trapped into being a mouthpiece for the Conservatives, the Liberals or the NDP. We want to keep out of all that.

Senator Tremblay: I think we have misunderstood one another.

Miss Séguin: I have probably misunderstood, . . .

Senator Tremblay: I did not express myself clearly.

Miss Séguin: I simply want to keep out of it. I know that your question was well meaning, but I have no ready answer. If I knew more about acquired rights, I might be able to respond.

Senator Tremblay: What you are telling me, then, is that you are for the principle of extending it to everyone.

Miss Séguin: I am for the principle of extending it to all Francophones outside Quebec.

Senator Tremblay: To all of the provinces . . .

Miss Séguin: To all of the provinces, of course.

Senator Tremblay: Section 133.

Miss Séguin: Section 113. But if you tell us that we can have it tomorrow morning for Ontario and New Brunswick, but we will have to wait a year for the other provinces. we can wait. We have been waiting for 113 years!

SECTION 133, LANGUAGE RIGHTS

Senator Tremblay: The problem is that you do not entrench a schedule in the Constitution: you entrench a principle.

[Page 45]

Do you maintain that your principles should be entrenched?

Miss Séguin: Justice for all, beyond a shadow of a doubt, sir.

Ron Irwin, Jeanine Séguin, & René-Marie Paiement (Assistant Director General, Fédération des Francophones hors Québec), p. 46

Mr. Irwin: Yes, it does. Thank you very much.

I would like to get some clarification on Section 133, because again there is a lot of misinformation on this particular section of the British North America Act; a lot of people think that 133 will bring in English and French, stop signs, and a whole grouping of rumours that are just not correct.

Now, as I read Section 133 there are three things that would be affected: the legislature, the courts, the provincial acts and regulations. In the provincial legislature there would be no substantial difference from what we see in Ottawa and that would mean that they would have to get more staff and more hardware in Toronto, and as a matter of fact in 133 it only says, if you read 133 in reverse, because it is talking about English in the Quebec legislature, it would mean that English may be used in debates. It does not even go as far as simultaneous translation, but in this day and age you would almost have to accept simultaneous translation. So in my understanding it would be no different than what we have in Ottawa that would be imposed in, say, Toronto; is that correct?

[Translation]

Miss Seguin: If I may, Mr. Chairman, I think this would not be much of a burden for certain provinces, they would not have such a big step to take in certain cases.

[Text]

Mr. Irwin: So, it is just a matter of hardware and staff.

[Translation]

Miss Seguin: Well, listen. I cannot answer yes or no, but as I said earlier, if it is a question of duplication of services, not duplication but surplus costs, I sincerely think that the federal, should at least, help these provinces if those costs were too prohibitive.

[Text]

Mr. Irwin: Let me go to the Courts now . . .

SECTION 133, LANGUAGE RIGHTS

[Translation]

Miss Seguin: Excuse me. Could I go on Mr. Chairman?

The Joint Chairman (Mr. Joyal): Go on.

Miss Seguin: Mr. René-Marie Paiement would like to make a comment. Thank you.

The Joint Chairman (Mr. Joyal): Of course. Mr. Paiement.

Mr. René-Marie Paiement (Assistant Director General, Fédération des Francophones hors Québec): Yes, Mr. Chairman. I would simply like to say that given the statistics mentioned a while ago, applying section 133 to all the provinces is still a symbolic gesture for us, which has its value, of course, but the statistics given a while ago shows very well why the Federation des Francophones hors Québec has made these demands in its brief so as to put a stop to that assimilation.

We criticize this project to indicate clearly that it is high time that something serious be done if we want to maintain the French culture in Canada and that is all I want to say.

[Page 47]

[Text]

Mr. Irwin: I appreciate that but I think we should get to exactly what it is we are talking about rather than symbolism.

Now, we have dealt with the legislature and the second point is the courts, and it is my understanding in Ontario right now that judges, lawyers and reporters are made available in criminal cases and you either change the venue and go where they are available or they will provide them at the place of the original offence. And it is also my understanding that in certain selected areas, in Small Claims Courts, they are now having civil trials in French. I was talking to a judge recently, Judge Stortini, who indicated he had just finished one where a third of the people spoke only French, a third spoke only English and a third spoke both or understood both, and the pleadings came in partly in French and partly in English; this was Small Claims, and it took a little longer but it worked.

Now, is that your understanding of the situation in Ontario as far as what they are doing?

[Translation]

The Joint Chairman (Mr. Joyal): Miss Séguin.

Miss Séguin: Mr. Chairman, I must recognize that there has been some progress done in Ontario. It is true to say that we Francophones now have the right to be criminals in French. That is good and I am happy about it.

SECTION 133, LANGUAGE RIGHTS

Secondly, we have to be logical with ourselves and honest, and we must recognize that it is in French also for the small claims. But there is still the civil court, there are still some steps to be taken, but honestly I must say there has been some progress in Ontario during the last 10 years. In this day and age people move very fast and we find it is too slow. We would like that it be done faster and we hope that this committee can help us to accelerate things.

[Text]

Mr. Irwin: I would like to deal with the last point that would be affected by 133 and that is provincial acts and regulations. Now, I spoke to the ACFO group who advised me that they are now receiving some statutes in French in Ontario. and I also spoke to the franco-Manitobans who indicated that they do not want all provincial acts in the past translated, they are talking about from here on, all present and future acts.

Now, as I understand 133, it would make it mandatory that provincial acts and regulations be in English and French, but this could be changed. There could be a caveat on that Particular portion so that only future acts could be in French and English. Is this satisfactory?

[Translation]

Miss Séguin: Mr. Chairman, evidently a translation is welcome but there is quite a difference between having a translation in living. We need institutions in the field of social services, community services and education; we need homogeneous education boards; we need to be able to manage our own institutions.

[Page 48]

Of course a translation effort is done but you cannot translate all the Manitoba and Ontario acts if the young generation does not have the proper school or education system to learn and practise its mother tongue, all these nicely translated books will be useless. So, translation is not enough, translation will be useful to the adults but the young people who are there, with whom I deal every day, need more than a translated book; that is my personal opinion, of course.

[Text]

Mr. Irwin: One final question. I go back to Section 133. Premier Davis has said that he needs time because there are many things he would like to work out.

If Section 133 were imposed, and if we agreed with Premier Davis, would a time limit of ten years to bring this into Ontario, provided it was permanently entrenched in the constitution, be satisfactory to you?

[Translation]

Miss Séguin: Well, time will tell. Mr. Chairman. Ten years! I do not think we can wait that long because there is a huge assimilation rate in some parts of Ontario. If the average for a province is about 26 per cent, one should not forget that in some northwestern areas of the province the rate is the same as in the west of the country. In British Columbia, as I mentioned a while ago, the rate is

SECTION 133, LANGUAGE RIGHTS

66 per cent. Well, in northwestern Ontario, it is also 66 per cent. The examples we gave of the national level can, in some cases, be easily applied to the provincial level. So, I believe that ten years is much too long and is quite unacceptable at this time.

Lorne Nystrom, Jeanine Séguin, Jean Lapierre, Bryce Mackasey, Senator Tremblay, & Senator Asselin, p. 49

Mr. Nystrom: I do not know. Yes, I have another question.

In your brief, you said that you would wish Section 133 to apply immediately to Ontario and New Brunswick and, later on, to the other provinces. When should it apply to the other provinces? If I remember correctly, Mr. Roberts, who was Prime Minister of Ontario, mentioned some 12 years ago, that he agreed with the principle of having bilingual courts in Ontario, as well as many other bilingual services. Now, 12 years later, you tell us that you still face the same problems. You are obviously very patient but when do you think . . .

Miss Séguin: I should say, Mr. Chairman, that Mr. Nystrom provided part of the answer in his question. If nothing has been done in 12 years, it is time, now more than ever, to begin to apply Section 133 to all the provinces.

Mr. Nystrom: Perhaps I should now give the floor to Mr. Jake Epp, Mr. Chairman, so that he can explain to everybody the deals between Bill Davis and Pierre Trudeau!

The Joint Chairman (Mr. Joyal): Thank you, Mr. Nystrom.

I will now give the floor to Mr. Jean Lapierre and ask him to remember that we have considerably exceeded our timetable.

Mr. Lapierre: I do not intend to keep the members of this committee here for too long but, before asking questions, I would like to tell something to my hon. colleague, Mr. Asselin. With all his friends, on the other side of the table, he keeps

[Page 50]

parroting the same question dealing with the consultation process before the tabling of the resolution. I want therefore to tell him that he can keep on asking this question, he will always get the same answer, that is that there has obviously not been any consultation before tabling this resolution, if one excepts two joint committees of the House and the Senate, the Laurendeau-Danton Commission, the Pepin-Robarts Commission and 53 years of history.

I would now like to welcome our witnesses. Last September, I was also an observer at the federal-provincial conference of the prime ministers and I remember that you jumped up, a few times, when various provincial prime ministers did not prove to be very generous towards the French-speaking people outside Quebec.

I must admit that I have felt the same way, many times.

SECTION 133, LANGUAGE RIGHTS

As far as your first recommendation is concerned, about a preamble, you have obviously noticed that, unfortunately, this resolution does not have a preamble. Therefore, if the principle of the equality of two founding peoples were recognized throughout the resolution, do you think that it would allow us to do away with a preamble, which, as you know, would raise all sorts of problems?

Miss Séguin: I would like to make two remarks, Mr. Chairman.

First of all, I would like to answer Mr. Lapierre. Since we do not have too much time, I would like to quote a sentence from a document published by our policy committee «Pour ne plus être sans pays». This sentence corresponds to what we would like to see in the preamble.

The Francophones outside Quebec are convinced that no valid project can be conceived if it is not based, first and foremost, upon the double fact of the association of two peoples and of ten provinces. This is a basic requirement for Canada.

This is what I would like to see in the preamble and I would strongly suggest that you do include it . . . If you agree, I can give it to you as a present.

Mr. Lapierre: I have it.

Miss Seguin: Secondly, I would like to make a last statement.

I do not want to be nasty, Mr. Nystrom, but I would like to quote from page 22. My interpretation of things may be wrong, but I want you to know that, according to the census of 1971, there were 789,185 Anglophones in Quebec at that time. According to the census of 1976, there are now 800,680. There has, therefore, been a slight increase and I would like to quote a sentence from page 25, reflecting the existence of a double standard.

What is the meaning of a negative assimilation rate of minus 125 per cent for the Anglophones in Quebec?

[Page 51]

This means that far from being assimilated, the Anglophones in Quebec are assimilating a part of the third group of Quebecers at a rate of 74,000. as you can see from table number two.

Does that answer your question?

Mr. Nystrom: Yes, it is quite a good answer. Since there has been an increase in their numbers, theirs is a vastly different situation. in comparison with the Francophones outside Quebec.

The Joint Chairman (Mr. Joyal): Thank you, Miss Séguin. I believe you are through with your questions, Mr. Lapierre. Mr. Mackasey.

Mr. Mackasey: Je serai très bref, Mr. Chairman.

I would begin by saying, dear Miss Séguin. that if Senator Tremblay's political party is ready, at this time, to move an extension of 133 to the whole country, I would be ready to vote for such a motion.

SECTION 133, LANGUAGE RIGHTS

Senator Tremblay: Give your own answer first of all.

Mr. Mackasey: I said that because Senator Tremblay asked a question about the acquired rights in the province of Quebec and in the province of Manitoba, and you were quite wise in not answering him. As you know, we do not wish to be assimilated either but I must say that I am in full agreement with you that section 133 should be extended to all the provinces. I repeat, therefore, that if Senator Tremblay comes up with a motion to that end, on behalf of his party, I will vote for it.

The Joint Chairman (Mr. Joyal): Thank you. Mr. Mackasey and Miss Séguin. Senator Asselin: On a point of order, Mr. Chairman.

Once again, Mr. Mackasey is trying to transfer his own responsibilities on other members of the committee. Since he belongs to the government party, let him show the courage of moving such an extension of 133.

Mr. Mackasey: is your party ready to support it?

The Joint Chairman (Mr. Joyal): Order, please.

Senator Asselin: Tell us your own position, since you are a member of the government.

-----o0o-----

November 27, 1980: Jean Lapierre & J. Angus MacLean (Premier, Government of Prince Edward Island), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 14, then scroll to p. 100)

Jean Lapierre: [...] Mr. Premier, with the rate of Francophone assimilation of 40 per cent in your province which has the second largest Francophone component percentage wise in Canada, as you know the largest one is New Brunswick and then it is your own province with 13.7 per cent of Francophones, and I would point out that Quebec has only 10.6 per cent of Anglophones, given those figures, Senator Roblin pointed out that his province had far less, that Manitoba had far less Francophones and recognized the quality of the two languages. Yesterday evening the Federation of Francophones Outside Quebec urged us to have the quality of the two languages recognized in all the provinces and in all the provincial institutions.

Mr. Premier, without getting into a political debate, I would like to know your response if tomorrow morning this Committee decided to impose it upon you—and I emphasize the word “impose”—through the provisions of Section 133, would you welcome and accept that change in your regime as a means of respecting that equality or would you be reluctant?

[Text]

SECTION 133, LANGUAGE RIGHTS

Mr. MacLean: Mr. Chairman, it is with regard to language rights you speak now? Language rights are a very difficult and emotional problem with varying difficulties and problems from place to place throughout the country. We have great sympathy for the percentage of Acadians in Prince Edward Island whose mother tongue is French. In absolute numbers they are rather small because our total population is rather small. We have taken action, in the last year we have, as I mentioned in my brief, passed legislation to assure certain rights to people whose first language is French.

I might add, however, that that is nothing new, it just puts it in legislation, the practice has long been in use even before Confederation, admittedly with varying degrees of extent, perhaps, in some situations their position is better than others. For example, in fairly recent years our school system in Prince Edward Island has been consolidated and this resulted in less opportunity for people to be educated in their language as compared to the situation when schools were small, very small, and there were pockets of people whose mother tongue is French. They were a smaller system, they were more easily accommodated.

However, I also wanted to say that both languages are used in our legislature but there would be practical problems for us with regard to some things. We as a government are trying to take some action to provide services in both languages where this is appropriate, and so on. But there is a danger in situations of this sort, of imposing a very heavy load on taxpayers for a very small benefit. When I say that, I do not want to leave the impression that rights should be measured in terms of economics. They should not be, any more than our judicial system should be. However, I feel that prominent in the realms where language rights are strictly at the present time in provincial jurisdiction, that the provinces should be

[Page 101]

trusted to do what they should do under those circumstances. I think we have to have faith in ourselves as Canadians. I see the honourable member shaking his head. Maybe his faith is shattered. I do not know with regard to that, but mine is not.

-----oOo-----

November 28, 1980: [Ron Irwin](#) & L. Yves Fortier (National Treasurer, Canadian Bar Association), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 15, then scroll to p. 23)

Mr. Irwin: As regards Section 133 of the British North America Act, in relation to Ontario and New Brunswick, I would like to seek your comments on the application of that section on civil litigation. As I understand it, experiments are taking place in Ontario in the Small Claims Court where there are cases going on in, if you like, French.

Have you any comment to make as to how well this is working?

[Translation]

SECTION 133, LANGUAGE RIGHTS

Mr. Fortier: Mr. Chairman, though I am from Quebec, I can nevertheless assure you that the system put in place in Ontario works reasonably well, to my knowledge. At Chapter five of its report towards a new Canada, the Canadian Bar Association had recommended that provisions for using one official language or the other in a criminal case be enshrined in the constitution.

We had also recommended enshrining the right to testify in French or in English before any Canadian court. We think that the proposed resolution does not go far enough. We agree with you, Mr. Irwin, to say that asking this question helps pointing out the danger there is in not enshrining such a right.

Today's Ontario government is encouraging the use of French. But will tomorrow's government do the same? This is the main reason why, in this field as in others which have been commented upon, we recommend the enshrining of certain fundamental rights.

-----oOo-----

December 4, 1980: Richard Hatfield (Premier of New Brunswick) & [Senator Roblin](#), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 19, then scroll to p. 54)

Senator Roblin: [...] I would like to deal with another point you have mentioned. It has to do with the language question. In my own province, under Section 23 of the Manitoba Act, we are obliged by the present constitution to provide certain rights for French speakers in Manitoba, in our courts, in our legislature, et cetera.

I noticed, by your brief, that you, in effect, reading it, would like to apply the same or roughly the same rule by Section 133

[Page 55]

of the British North America Act or Section 23 of the Manitoba Act to New Brunswick.

Mr. Hatfield: We want to go beyond Section 133, because with the Official Languages Act of New Brunswick, after a great deal of consideration, if we only asked to be included in Section 133 or whatever the equivalent is in the resolution, then we would be subtracting rights which are already existing in the Province of New Brunswick, and therefore we ask to go beyond that and that would be included in the Charter of Rights.

Senator Roblin: I understand the point very well, because in the present Charter, as far as educational rights are concerned, if that were imposed on the provinces, the French speakers of Manitoba would be worse off, in my opinion, than they are now.

Mr. Hatfield: How could they be worse off?

SECTION 133, LANGUAGE RIGHTS

Senator Roblin: Simply because it is a question of who is entitled to the use of the French language in the schools. The present policy in Manitoba is broader in Section 23 of the Manitoba Act. I am on all fours with you there.

But here is the challenge you put to us. You say you want to protect francophones in the Province of Ontario, and you leave it up to this Committee to do so. Would you like to advise us whether you wish to mandate this for the Province of Ontario? How would you advise that we should go about accomplishing this?

Mr. Hatfield: The Parliament of Canada either does it as far as Ontario is concerned, or they remove the imposition of it in the Province of Quebec as it affects the rights of the English speaking Canadians.

I am telling you that you cannot, in my view, leave exposed an obvious inequity and sustain a country. You cannot do that.

Senator Roblin: Well, I think that is an expression of very noble opinion, and I am not taking anything away from it.

But what you seem to be asking us to do is either, by federal intervention to interfere with the rights of English speakers in Quebec, or by federal intervention impose something in favour of the francophones in the Province of Ontario.

My point is not really with your goal, which is to secure equality and even treatment, but it is a question whether the federal government should have the right or take unto itself the right to make these changes of its own authority over the head of the provinces.

Mr. Hatfield: Again, there was a time when I believed that these things could be worked out with the provinces; that language and an amending formula and so on and so forth could be worked out.

Eymard Corbin & Richard Hatfield, p. 62

Mr. Corbin: Premier Hatfield, do you think that clause 133 of the British North America Act would give anything more to the citizens of New Brunswick than they have presently through the provincial legislation on Official Languages?

[Text]

Mr. Hatfield: Section 133?

Mr. Corbin: Section 133 of the BNA Act, would it give New Brunswick . . .

Mr. Hatfield: It would only give them protection of the constitution, that is all. It would not give them protection of their language as far as government services are concerned. In other words, they have a right in New Brunswick to speak to and be addressed by their government both in English or in French and they would not have that right, I do not believe, under Section 133.

SECTION 133, LANGUAGE RIGHTS

[Page 63]

[Translation]

Mr. Corbin: In that case, you are confirming my impression that even without clause 133 of the BNA Act, the New Brunswick Official Languages Act does ensure adequate protection to its citizens and that is why you would want us to include it in our proposed resolution.

[Text]

Mr. Hatfield: It does not ensure?

Mr. Corbin: It does.

Mr. Hatfield: Oh, it does ensure. Well, up to a point. I think that we are in the process now of reviewing the Official Languages Act in New Brunswick and, not in the forthcoming session in the spring, but in the one after that, I hope to have a number of amendments made to the Official Languages Act in New Brunswick.

Of course, the other difficulty with the Official Languages Act in New Brunswick is that it can be tampered with just as it was in Quebec, as the English speaking people in Quebec discovered, rights that they took for granted can in fact be tampered with. I want to make sure that does not happen.

Mr. Corbin: By including it into our. . .

Mr. Hatfield: By putting it in the charter.

Mr. Corbin: All right, that confirms my impression. Do you feel that the contents of the resolution, the constitutional package as we have it in print now, adequately reflects the minimum consensus reached over the years and at the September meeting of First Ministers?

Mr. Hatfield: Well, it is certainly the minimum and I think that I cannot honestly find areas that are included, having listened to a number of, as I said, a number of Premiers express their views with regard to this matter, that they can have strong objection to. The Premier of British Columbia does object to the concept of equalization because he thinks money should go directly to people as opposed to governments. It is a principle that he stands for so he might have objections to that.

So far as the Charter of Rights is concerned, there are a number of Premiers and a number of people in this country who believe that rights are better protected in Parliament and the legislature than they are in the constitution, but other than that, the amending formula, as far as I am concerned, is definitely open, wide open. I have said if we do not reach agreement, Parliament can come up with any amending formula it likes, of any kind, shape or form, but I do not know whether there are areas there that they can strongly object to. I think the big objection is that things they wanted in there are not there.

Richard Hatfield, p. 72

SECTION 133, LANGUAGE RIGHTS

Mr. Hatfield: [...] But that is not my concern nor my interest. My interest is to see us in control of our own constitution.

I go back to 1971. In that year we had a substantial number of provinces who were prepared—and said so—to go to their legislatures and ask that the official languages of French and English be recognized at the provincial level or that Section 133 should apply to them. I wish I had had the constitution of Canada in Canada, so that that agreement could have been put in the constitution. I want to tell you that I think we could have avoided 1976 to 1980. I think that could have been avoided if we had had our own constitution.

I want to say that I can remember a time when every province in Canada supported the principle of equalization without reservation. I wish we had our constitution then so that we could have put that in at that time.

But, because we have waited for the ideal, for the most perfect solution, for the best strategy, we have not been able to do it.

I want to tell you I am convinced now that the only thing that is going to come about as a result of delay is delay.

I think this country has delayed long enough, and the country must move forward. The people of Canada want to see Canada live up to its potential' But, first of all, we have got to take this step.

-----oOo-----

December 8, 1980: [Jean Lapierre](#) & Gilles Tardif (Director, Canadian Federation of Civil Liberties and Human Rights Associations), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 21, then scroll to p. 22)

Mr. Lapierre: [...] First of all, may I congratulate you on your excellent presentation and for the many hours of work which, I am sure, you have devoted to us. Allow me also to comment you on Sections 1 and 15. I think that all members of the committee are now aware of representations which have been made and your proposed amendments to those two sections will only serve as further motivation.

Your request that the words “substantial number” in Section 20 and “in which the number of children of such citizens is sufficient” in Section 23 be removed. Personally, I feel that is a legitimate request. Mr. Hatfield, who had made some very eloquent remarks at the federal-provincial conference concerning precisely the question of sufficient numbers, appeared here last week. I only regret that I did not raise it then. My comments are addressed specifically to Mr. Tardif, as a Francophone, when I say that there is no reference to the provisions of Section 133 of the existing Constitution. Many witnesses have appeared before us to ask that that section be extended to

SECTION 133, LANGUAGE RIGHTS

Ontario and the Premier of New Brunswick also asked that it be extended. Some have even suggested that it be extended across the board to all the provinces.

Have you studied that question?

The Joint Chairman (Mr. Joyal): Mr. Tardif.

Mr. Tardif: Yes.

I am not in the best position to speak clearly on that issue because the people who did most of the work in that area are beside me today. Nonetheless, in our presentation, we insist that the proposed resolution include all the commitments already made in Canada.

Our proposal is not aimed at reducing what has been obtained or what is already guaranteed. Rather, it is designed to maintain the rights already granted, to have them included in the Constitution, and extended.

In fact, if other groups requested that Section 133 be extended, we would agree with them. However, we did not make specific mention of that question and devoted our energies more to the sections of the charter themselves.

-----oOo-----

December 9, 1980: David Copp (Vice-President, British Columbia Civil Liberties Association), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 22, then scroll to p. 22)

David Copp (Vice-President, British Columbia Civil Liberties Association): [...] Some will say that we are asking that the British tradition of Parliamentary sovereignty gave way. And so we are. However, in the first place, we are a federal state and this means that no elected assembly in our nation, federal or provincial, is ultimately sovereign. Nor are powers exhaustively distributed among the levels of government. The BNA Act, in Section 93, Sections 96 to 99, and Section 133 contains what constitutional experts refer to as "the little bill of rights"; guarantees which no legislature has the power to change. So Parliamentary sovereignty is incomplete as matters stand.

-----oOo-----

December 10, 1980: Rita Desantis (Spokesperson, National Italian-Canadian Congress), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 23, then scroll to p. 10)

Rita Desantis (Spokesperson, National Italian-Canadian Congress): [...] We well understand that linguistic rights are not and cannot be, in the present phase of the evolution of Canadian society,

SECTION 133, LANGUAGE RIGHTS

guaranteed solely to individuals but that their collective dimension must be considered in all fairness.

Freedom of choice can only be rejected by the majority of our Francophone fellow citizens from Quebec and their opposition is justifiable because the prerequisite of equality of status for both official languages does not as yet exist. A look to the near future gives no hope of radical change in this respect. We understand the feelings of our francophone fellow citizens and we share them.

[Page 11]

We believe that the first step towards true equality of status for both official languages should be the extension of Section 133 of the British North America Act to Ontario and New Brunswick.

In conclusion, we believe, with respect to linguistic rights, that the mother tongue criterion is acceptable if measures are taken to protect the rights enjoyed by those allophones already residing in Canada whose language of instruction in Canada was English.

Furthermore, we believe that measures should be taken immediately to correct, within the next few years, the situation of both official languages so that the minority language can cease to fear for its survival.

Finally, because we are Quebeckers, we have chosen to assume the French dimension of Canadian society by being able to communicate in that language and by better integrating ourselves in Quebec and in Canada.

Because we are Canadians, we also want to be able to communicate with our other fellow citizens from coast to coast without being faced by linguistic, regulatory or other barriers.

Senator Rizzuto, Antonio Sciascia (Legal Adviser, National Italian-Canadian Congress), & Rita Desantis, p. 13

Senator Rizzuto: [...] I shall address my first question to Mr. Sciascia. You ask that Section 133 of the BNA Act apply to New Brunswick and to Ontario.

Do you think that this will better protect the rights of Francophones in Ontario and in New Brunswick, and do you think that it is right that the Anglophone minority in Quebec should be in a better position to request its rights because the Francophones outside Quebec will be protected then, just as are the Anglophones in Quebec?

Mr. Sciascia: It seems to me that would be more normal. As we have stated in our brief, it is certainly the first step towards the bilingualism to apply Section 133 of the British North America Act in those provinces where there is already a fair number of Francophones, such as New Brunswick and Ontario.

In our mind, that is the first step towards bilingualism.

[Text]

SECTION 133, LANGUAGE RIGHTS

Miss Desantis: I would like to add something to that.

We are told that Canada is presently bilingual, but if we go across the country we realize that this is not the truth.

If we really want to say that Canada is bilingual we have to set up a program that effectively makes Canada bilingual.

Then in Ontario and in New Brunswick we already have conditions which would allow for the extension of Section 133 to those provinces and it seems but petty politics to refuse to allow Section 133 to be also applied to those provinces, otherwise the whole notion of bilingualism is just a lovely notion and not something that we really want to achieve for Canada.

Senator Asselin, Antonio Sciascia, & Rita Desantis, p. 16

Senator Asselin: When you speak of extending Section 133 to Ontario and New Brunswick, would you share the opinion of the Liberal leader in Quebec, Mr. Ryan, who said here

[Page 17]

before the press club, that if Section 133 was not extended to Ontario and New Brunswick, that once the premier of his province, he would rescind the application of that Section 133 to Quebec. Would you share that view?

Mr. Sciascia: I do not think Mr. Ryan has that power.

Senator Asselin: He may not have the power, but Mr. Ryan has declared he would do so.

Mr. Sciascia: Legally speaking, I do not believe that Mr. Ryan can unilaterally change the constitution.

Senator Asselin: That is very interesting. Then, if Mr. Ryan, as the premier of a province could not take unilateral action, why can the federal government?

Mr. Sciascia: Senator, the federal government is in fact the government of the entire country. So there is a difference between the federal government and a province.

Senator Asselin: Let us deal with the text of Section 23 in your brief, which apparently was authored by Senator Rizzuto—although at one time it was said to have been drafted by the member for Sainte-Marie, which is a mood point—would you not think that the definition and changes as proposed for Section 23 would also create two classes of immigrants?

Mr. Sciascia: There would be some difference for the new immigrants coming to Quebec and the other provinces, They would attend public schools, depending on the province. But it would correct certain anomalies caused by other provincial law, and in our opinion, the amendment would ensure that those citizens who have been harmed by this law, would see their problems

SECTION 133, LANGUAGE RIGHTS

partially redressed. For instance, there are those problems of illegal immigrants. I think this amendment would go far in correcting this problem, because it would extend the application of the law, Instead of prescribing “the primary school”, as does Bill 101, the provision is extended to include “their primary and secondary school instruction”.

As it stands now, there is a great number of anglophones who might want to send their children to French schools in order to learn that language, who will be excluded if at any time they should decide to send their children to a school using their mother tongue. By adding the secondary school, you avoid this problem.

[Text]

Miss Desantis: May I add something to that, please?

The Joint Chairman (Mr. Joyal): Go ahead.

Miss Desantis: My parents were immigrants, and I was a little girl when we came to Canada. We made a choice to come to Canada. If we had decided to go to England or France, had we been so fortunate as already to have known either French or English at that time we would have had to learn the language of the country where we would have immigrated.

[Page 18]

When someone is lucky enough to come to Canada from Australia or someone comes here from Italy, both people have made a choice to come to Canada and both people know that they are going either to Quebec or to Ontario, as the case may be. But they will accept the fact that they would be going to an English or a French school, I do not think it creates two categories of immigrants; otherwise immigrants to any country in the world would be of two categories: those who already know the language of the country they are going to, or those who do not.

Bob Rae, p. 18

Mr. Rae: Thank you, Mr. Chairman. I would also like to congratulate you on the presentation you made today. I would also like to say that I agree entirely with your recommendation on the preamble, and I agree with your proposals on extending Section 133 to New Brunswick and Ontario.

Ron Irwin & Antonio Sciascia, p. 21

Mr. Irwin: (Speaks in Italian.)

Anyway, I am very pleased that you are the first multicultural group who have come before us who have recognized the English-French character of the nation and want to build on that character. and I am very pleased that you are forcefully putting Section 133 across.

Out of curiosity, why are you interested in 133 being imposed on Ontario? That really does not affect you living in Quebec?

SECTION 133, LANGUAGE RIGHTS

[Page 22]

Mr. Sciascia: Well, if we want to put into effect what we preach, which is bilingualism, then we have to start implementing that policy somewhere, and I think that if we treat the francophones in Ontario the same way that the anglophones are treated in Quebec, then I think that would be a good start.

-----o0o-----

SECTION 133, LANGUAGE RIGHTS

December 16, 1980: Senator Roblin & J.R. Richardson (National Chairman, Canadians for One Canada), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 27, then scroll to p. 15)

Senator Roblin: It has worked, I put it to you that way; and of course the Vancouver Formula I will agree that it is not perfect, I will certainly agree with that. It does limit opting out to four specific categories and I think if we examine them we might find that they would not be too hard to live with.

Now I want to move on to another matter which you dealt with to some considerable extent, and that is the language question; and I would like to start off with the question of the British North America Act and indeed the Manitoba Act because in Section 133 of the British North America Act and in Section 23 of the Manitoba Act the provinces of Quebec and Manitoba are constrained in the language field to recognize a bilingual character in respect of the proceedings in the Parliament and the Legislature and in respect of proceedings in the courts and all the matters that are associated with that and, roughly speaking, that is the impact of those two Sections.

Now we have had some witnesses before the Committee, indeed we have had some members of the Committee say that those two acts should be imposed on both the province of Ontario and the province of New Brunswick. In fact, the Premier of New Brunswick said he would like to have it imposed upon him.

I would like to get your view as to what attitude the Committee should take toward that problem.

Mr. Richardson: I would say, first of all, that Section 133 of the British North America Act is right and should remain in our constitution. I do not think there is any question about that.

I think that there is or could be some difficulty in extending that to other provinces. I have to put this in a way, hypothetically, to make the point that I would like to make, and show, as I was saying earlier, the rigidity and inflexibility of a constitution.

Supposing for instance in the case of Manitoba there would only be instead of the present five and one half per cent French-speaking Manitobans that there was one half of one per cent or one quarter of one per cent or perhaps no people who claim to be or said they were French speaking. The court would have made exactly the same decision that it did because the court does not look at the numbers of people, it looks at what the law says, the law that was made 100 years ago, and 1

[Page 16]

think that that is a kind of rigidity and inflexibility that we do not want to extend.

My whole position really is that we must not lock the country up. I believe our Parliamentary system and our Legislatures can make the laws that will be appropriate to the times and it is wrong to lock up the future any more than it is now under a constitution.

SECTION 133, LANGUAGE RIGHTS

Senator Roblin: You are homing in here on one of the central problems that we have before us because while the appeal of flexibility, and you have expressed it well, is a strong appeal, practically every one of the minority groups that have come before us have said that that is all very well in theory but in practice we would feel safer and more comfortable if we felt we had something of a more permanent character to rely on than, as they describe it, the temporary decision of the legislative or parliamentary body which can rescind tomorrow what they approve today. That is one of our central problems how do we reconcile this need that minorities feel so strongly to have some better protection than they have now and at the same time assure a measure of flexibility so we can deal with the future.

If you had been here to listen to the Japanese Canadians, for example, you could not help but be moved by their desire to secure their proper place in the Canadian nation.

Mr. Richardson: I think the answer to that is for our Parliament and our legislature to be more responsive. I do not think the answer is to limit the legislatures and Parliament by a constitutional provision.

Bryce Mackasey, J.R. Richardson, Lorne Nystrom, p. 20

Mr. Mackasey: Perhaps I should say this, as I have only more question. I am rather pleased at your strong, without reservation, endorsement of Section 133 of the constitution as it applies in the Manitoba Act—in Manitoba.

You are suggesting that the extension of French or the official recognition of French in your courts and the legislature has not been the divisive element in Manitoba?

[Page 21]

Mr. Richardson: No, it has not. The Supreme Court made the only decision it could. But, as I say, it is an example of the rigidity.

Mr. Mackasey: Never mind the rigidity. I am asking you whether Section 133 in Manitoba at the time was a disruptive factor?

Mr. Richardson: It is not.

Mr. Mackasey: Why would it be in Ontario or New Brunswick, then?

Mr. Richardson: It is not seriously. Ontario and Quebec are making very good progress, Ontario in particular.

Mr. Mackasey: I am asking you if Section 133 were included in the constitution, based upon your experience of the provisions of Section 133 in Manitoba, which you said was not divisive, why would it be divisive in Ontario?

Mr. Richardson: You know that Section 133 only affects the legislature and the courts and does not affect anything that is more meaningful to people who want, say, education rights.

SECTION 133, LANGUAGE RIGHTS

Ontario is moving ahead. I have heard around this table a number of students in Ontario who were in French schools—over 100,000, 90 per cent of those who are eligible.

I think there is evidence that progress has been made under the legislative process, and you do not need to entrench.

Mr. Mackasey: Thank you, Mr. Chairman, and I hope you will give me a second round.

The Joint Chairman (Mr. Joyal): I will keep your name on the list, Mr. Mackasey.

I would like to call now on Mr. Lorne Nystrom.

Mr. Nystrom: Thank you, Mr. Chairman.

It is always a pleasure to follow my good friend, Mr. Mackasey. I see Mr. Allmand laughing. I would like to pursue some questions with Mr. Richardson which Mr. Mackasey was pursuing. I would also like to welcome him to the Committee as an old parliamentary colleague of mine, and to welcome you back to Ottawa.

I wanted to ask you, in order to clarify the position again on Section 133 of the British North America Act, what is your recommendation to the Committee? Should we recommend to Parliament that Ontario be bound by Section 133?

Mr. Richardson: No, I think that Section 133 obviously should go into the constitution as it is as written in the resolution; but I do not think it should apply to Ontario. I do not think it is necessary.

Mr. Nystrom: If it does not apply to Ontario, then, following your theory that all the provinces should be treated in the same way, will you recommend that the Committee should recommend to Parliament that we have Section 133 not apply to Quebec, in other words, just treat Ontario and Quebec the same?

[Page 22]

Mr. Richardson: Well, I do not think we should just look at this as Ontario and Quebec. I think that was a principle which was put into the British North America Act in 1867. I see no reason to take it out.

But I think that there is reason not to extend the entrenchment.

That is what my whole presentation is about. Do not lock us up anymore than we are.

Mr. Nystrom: You said, Mr. Richardson, that you were prepared to accept an amending formula where there was an opting out formula. Would you be willing to accept Section 133 where provinces could opt in, if provinces decide to opt in?

SECTION 133, LANGUAGE RIGHTS

Mr. Richardson: Provided that they could opt out. I do not like this plan where you can opt in, but once you are in, you are then in the constitution and you can only get out through the amending procedure.

Mr. Nystrom: Well, then, why should not Quebec have the right to opt out if the other provinces have the right to opt in and opt out? Would not the same rules apply to Quebec? Will you suggest to the Committee that, if the other provinces could opt in or opt out, the same rules should apply to Quebec?

Mr. Richardson: It is not something I have really considered very seriously. But it would not concern me greatly if that privilege was given to Quebec, if Quebec wants to opt out.

Mr. Nystrom: An argument was made by Mr. Claude Ryan, the Leader of the Liberal Party in Quebec and also by Mr. Hatfield, the Premier of New Brunswick, before this Committee a few weeks ago, and both of those gentlemen, of course, support Section 133 being in Quebec and also in Ontario as the province with the largest francophone minority. I wanted to ask you about your stand on language.

I appreciate the line you are drawing between the Official Languages Act and the question whether or not it should be enshrined in the constitution; you are differentiating between legislation and the constitution. I understand that.

There is an argument in our country whether or not a charter of rights should or should not be enshrined. Our party, historically, has supported enshrinement of a charter of rights, although a number of people in our party, such as the Premier of Saskatchewan, has opposed it, though in his case the exception has been language; he has always said he feels linguistic rights are part of the Confederation bargain.

But I will not speak for him, because he will be before this Committee on Friday morning.

But the question I wanted to ask you is this. Do you think there would be a promotion of unity in this country if we did not enshrine rights for francophones and anglophones? Do you feel Quebecers would feel more at home in a country where these rights were not enshrined in our constitution?

And I say that, Mr. Richardson, looking at a poli, not merely in Quebec or Ontario, but a poll done by Canada West

[Page 23]

Foundation in Western Canada asking a number of questions—over 100, and one of them was the question whether or not people would favour the enshrinement of linguistic rights in our constitution.

In Western Canada 53 percent agreed, so that the majority of the people in the region according to the Canada West Foundation, agreed that we should have two official languages.

SECTION 133, LANGUAGE RIGHTS

In the same poll, of course, it was pointed out very clearly by the Canada West Foundation, that a lot of people felt very, very alienated; the majority of people in Western Canada, fortunately, said they felt closer to the western United States than to central or Eastern Canada.

Twenty eight percent of them said they would even consider the possibility of independence for the west. So that we had a very strong feeling of alienation.

But, on the other hand, we had a majority of people in our region and your region of the country saying, "Yes, we should have linguistic equality and it should be enshrined in our constitution."

Now, in the light of those feelings, do you not think it may be doing much more to promote unity in this country if we do enshrine in our constitution the essence of the Official Languages Act?

Mr. Richardson: I cannot speak for Quebec. I understand that there is widespread opposition in Quebec to the entrenchment of any language rights. That was certainly led by the Government of Quebec, which has made representations opposing the entrenchment of language rights.

My position is the same with regard to the rest of the country. I simply do not think our language legislation has demonstrated that it is in fact achieving unity.

If it was achieving unity, then I would be the first to say that we should do more of the same. I would not, in principle still want to entrench, but I would not have the same objection.

But when I am uncertain about whether it is really achieving unity, then I think that is not the right time to lock it up for all time.

Mr. Nystrom: Perhaps, Mr. Richardson, Mr. Tremblay can correct me, or perhaps Mr. Lapierre—though I am not sure he is here at the moment.

But my understanding of the situation of the Quebec government is that they oppose the enshrinement of linguistic rights as it pertains to education, because that is something which comes under provincial jurisdiction; that the opposition in Quebec towards the enshrinement of linguistic rights at the federal level is a different story, because we as a federal parliament can amend the constitution and it affects only the powers of the federal jurisdiction. So I do not think you have much opposition in Quebec towards the enshrinement of linguistic rights federally.

Is this your reasoning as well.

[Page 24]

Mr. Richardson: No. I do not have the paper before me; but I can remember making statements at the time of the federal-provincial conferences in September, and the Quebec opposition was very strong, and they made statements which were general, and not just related to education, but the whole concept of locking up the future was stated very clearly in the Quebec position in opposition to the entrenchment of language rights.

Mr. Nystrom: I have got the signal from the Chairman. So I wonder if I could ask you this. You were talking very strongly about your objections to the amending formula, Mr. Richardson. You

SECTION 133, LANGUAGE RIGHTS

use the words “rigid” and “flexible”, and you say it could become a dictatorship of words, overwhelming the parliamentary system which for centuries guaranteed our freedoms.

In using that type of language, are you referring strictly to Section 41, which is the Victoria Charter, or are you also talking about the referendum procedure in the resolution, as we have it?

In other words, do you favour referendum, and if so, what do you think about the way the referendum legislation is written?

Mr. Richardson: No, I am referring there primarily—in fact, entirely to Section 41 of the Victoria Formula with the single province veto.

Mr. Nystrom: What is your position on the referendum procedure as part of the amending formula, which is really that if there is a deadlock there could be a national referendum? “Deadlock”, of course, as defined by what is written in the resolution?

Mr. Richardson: If it was only to establish the amending procedure, I would approve it.

If it is going to go beyond that, and start using referenda to establish a whole lot of other things which legislatures or governments could not agree on, I think that would be wrong.

It would be wrong for the federal government to be able to call a referendum and over-ride the provincial jurisdiction. But if, as I say, it is only to deal with the amending procedure, then a referendum would be all right.

Ron Irwin, J.R. Richardson, & Warren Allmand, p. 29

Mr. Irwin: Mr. Richardson, as I have moved across Canada from Newfoundland, places like Cheticamp and Moncton, where there is almost an equal French-English population, up through the Acadians, Sudbury, where you have a French-English fact, Kapuskasing and St. Boniface in your own province, which matches off with Winnipeg proper, I have a different conception of Canada and I must say I am neither French nor English. When I was in B.C. I was reminded that Simon Fraser, who got the university named after him, and the river, that in his canoe of 10 people people, 9 were French Canadians. And they received nothing except sore backs paddling Simon Fraser to the West coast.

But you know, you are a man who also held a prominent position and you came to a certain conclusion about Canada that I did not. And I quite frankly feel, quite deeply, that your conclusion about what this country is all about is wrong and dangerous and I thought we might have learned that earlier on in the year in the Quebec referendum.

I notice today the official oppositions, plural, you notice that, are very, very quiet, very timid about their examination of you and yet you support them in part. I think they have come to the same conclusion. And when I see the Mayors of the Municipalities coming here, and the Canadian Bar Association and people like Mr. Crombie supporting Section 133 and Mr. Nystrom supporting Section 133, and the former Premier of Manitoba speaking at least partially sympathetically about Section 133, and Premier Hatfield coming here and talking strongly about Section 133, I am now

SECTION 133, LANGUAGE RIGHTS

convinced that you are wrong, and that groups like the Italians who came from Quebec have a better conception of Canada than you do.

They feel that there is an English-French base upon which we will build multiculturalism.

Now, in your submission you state, at page 9:

Is the proposed constitution trying to protect minority language rights, or is it trying to create a bilingual country from sea to sea?

In this constitution that we have the government is going for very narrow rights, specifically in language “only where numbers “warrant”.

I suggest to you, Mr. Richardson, that this is a mis-statement of the facts and a mis-statement to suit your own purposes. Do you have any comment?

Mr. Richardson: Well, I am trying to make the distinction between legislated language rights, minority language rights and the concept of language equality in a bilingual nation from sea to sea. I think that there is a difference and a very clear difference. I would think that if Section 16(1), which we talked about, talked or asked for or placed in the right of receiving federal government services in French or in English, that there could not be any objection other than the over-all objection that we have of a constitution. But if we are assuming that there is going to be some additions to the constitution, that would be, I would think, fair; it would be reflecting the reality of Canada.

But that is not what Section 16(1) says. The little explanation book that the government put out about Section 16(1)

[Page 30]

says that the purpose was to “provide the right of the public to receive federal government services in both languages and to communicate with the federal government.”

Well, as I say, I agree with that but why not say that in Section 16(1). Why go to, as Section 16(1) does, and talk about the equality of status, equal rights and privileges, as to their use for French and English in all institutions of the Parliament and Government of Canada.

That is what I am talking about, is how this new constitution is in fact going to really express the just and appropriate language rights.

Mr. Irwin: Okay. Mr. Richardson, I have one last question.

Unless the francophones of Canada cannot speak in a legislature in his own tongue or receive education where numbers warrant or go to court in his own language, or receive federal services — not even provincial services — in his own language, it is nothing more than a multiculturalism, do you agree with that?

SECTION 133, LANGUAGE RIGHTS

Mr. Richardson: Well, I would say that it would be more because there are clearly more rights. The rights for French speaking Canadians are in legislation. Even in the Official Languages Act, which I have not argued against, are far greater rights than the language rights for other groups, so it was totally wrong of you to suggest that it would be just multiculturalism.

Mr. Irwin: Well, do you agree or disagree that unless they have at least those four things, we are only paying lip service to the francophones of Canada?

Mr. Richardson: I do not think the Official Languages Act is just paying lip service.

Mr. Irwin: I am not talking about the Official Languages Act ...

Mr. Richardson: Well, I am.

Mr. Irwin: ... I am talking about four specific things which combine the Official Languages Act and part of Section 133 and part of a tradition—the right to speak in the legislatures of this country; the right to get an education, where numbers warrant; the right to go to court and the right to federal government services.

I suggest to you that these are minimum requirements. would like to have your own theory about that.

Mr. Richardson: Well, we would have to look at them, each one. I would think that the right to speak in the legislature in Newfoundland or in British Columbia, in French, where there are something like half of 1 per cent of the population, I do not really think that that is necessary or desirable.

The Joint Chairman (Mr. Joyal): Honourable Warren Allmand.

I might remind our honourable members that time is overextended. Honourable Warren Allmand.

[Page 31]

Mr. Allmand: Well, Mr. Chairman, while I also have been on friendly terms with Mr. Richardson over the years, I must say that I have not seen any brief before this Committee with which I disagree more, and which I find so confusion.

On page 12 of the brief it says:

We are for the supremacy of Parliament ...

And I want to point out that under the present constitution, which Mr. Richardson also seems to agree with, in great part anyway, Parliaments are subject to many restrictions that are written into that British North America Act of 1867 and by other constitutional documents.

He goes on to say,

We are for one Canada built on the grand design set out by the Fathers of Confederation.

SECTION 133, LANGUAGE RIGHTS

Well, the Fathers of Confederation entrenched language rights in Section 133. They entrenched religious rights in Section 93. They entrenched responsible government in Section 20 and Section 53. They entrenched democratic rights in Section 37 and Section 50. They entrenched the division of powers in Section 91 and Section 92. So, if you are for the Canada built on the grand design set out by the Fathers of Confederation, you should be for, in principle at least, the entrenchment of basic rights. The Fathers of Confederation entrenched those rights which were important in 1867.

-----oOo-----

December 17, 1980: Lorne Nystrom & Michel Le Moignan (Interim Leader of the Union nationale and member for Gaspé at the Quebec National Assembly), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 28, then scroll to p. 41)

Mr. Nystrom: Thank you, Mr. Le Moignan. I have five or six other questions I would like to ask you. I have one question regarding Section 133 of the Constitution as it relates to the

[Page 42]

use of the English and French languages in Parliament and in the courts. This section is now enforced in Manitoba and in Quebec. I intend to table a motion in this committee to have this section of the British North America Act applied in Ontario and New Brunswick.

Mr. Hatfield is agreeable as far as New Brunswick is concerned but so far Mr. Davis has not yet given his approval for Ontario.

Would the fact of having the same linguistic rules apply in Quebec as in Ontario which has the largest population of francophones outside of Quebec be an important symbolic gesture for the people of Quebec? Do you think this would have an impact on the future of Canada and on the unity of our country?

Mr. Le Moignan: We are very careful about this in Quebec. Section 133 now applies in Quebec, in the federal Parliament and also in Manitoba further to the decision of the Supreme Court of Canada. If you are going to have this section extended to Ontario and New Brunswick, we will sooner or later be raising the question of linguistic rights, which brings us to the problem of education which raises an entirely different legal matter. That is why we did not try to reconcile the positions of the courts and of the other provinces, nor have we spoken about linguistic rights as such, because this is liable to cause problems in Ontario and New Brunswick and Manitoba as it has already done in Quebec.

-----oOo-----

December 19, 1980: Bryce Mackasey & Allan Blakeney (Premier of Saskatchewan), speaking in the Special Joint Committee of the Senate and House of Commons on

SECTION 133, LANGUAGE RIGHTS

the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 30, then scroll to p. 41)

Mr. Mackasey: [...] The right to use French or English or the right to receive some government services in either of those languages is also very important. It is not, after all, a right which we claim as humans; it is an essential fact of Canada, and if the French community of Saskatchewan is going to survive it needs to be serviced in its own language. If it cannot survive, then there is no reason that French speaking Quebec should encourage the existence within its community of a strong English presence.

Would you go so far as to extend under certain circumstances, and Mr. Nystrom, for instance, has made the point that he intends to bring in an amendment extending "Section 133 to Ontario and New Brunswick, would you be prepared to have him include in this amendment the same provisions for the Franco-Saskatchewanians which were demanded here by your community, and I do not ask that to embarrass you, I ask you as another concerned Canadian who I think has the same view of this country?

Mr. Blakeney: Well, let me attempt to respond to several things that Mr. Mackasey has said.

First with respect to the bargaining, I do not know whether the bargaining is over. It seems effectively to have stopped on the resource issue. Just let me take a moment. I want to quote from a document that was widely circulated, the Ministers eyes only document which became public at the time of the First Ministers' Conference which says:

It is clear that no agreement with the Western provinces on this item of resources will be possible at the First Ministers' conference without extending concurrency with federal paramountcy to certain aspects of international trade and resources. Acceptance of this principle will most probably mean an agreement with almost all provinces and will still be very much less than was contemplated in February, 1979.

Now, I believe that was the position of the federal government. I have not seen many departures from that. I believe

[Page 42]

that that is the position of the federal government and they have simply not agreed to this at all, so I think, all right, they are still playing that game and maybe, I do not know, but I just say that and I may be totally wrong on that, so I leave the question of bargaining. I just give that as evidence of saying that I would have thought time was running out and any time now would be soon enough to tell us what the federal proposition is on some of those points. That is really the essence.

Now, back on the language issue. I basically share your view of Canada that we will not survive as a bilingual country, we will not survive as a country if we have unilingual blocks. Accordingly, there must be some ability of Anglophones to exist as Anglophones in Quebec and Francophones to exist in Ontario and New Brunswick, and, yes, in Saskatchewan. This is not only directed to those Francophones or Anglophones who may be in a minority position now in parts of Canada, but also, as I say, to the Francophone majority in Quebec who ought to have some right to move

SECTION 133, LANGUAGE RIGHTS

across Canada, including to Saskatoon; or the Anglophone majority in Saskatchewan who should have some right to move to Quebec City and expect some services.

So once we get that concept in there, then, yes, this is why I say I agree to French language education. We are making some very significant progress notwithstanding what the ACFC may have suggested, and I have been saying this at federal-provincial conferences.

I am not now asking you to sympathize with me, but it is not a popular cause in Saskatchewan because the Francophone group in Saskatchewan alone is a very small linguistic group, well below Cree. And as for Ukrainians or Germans or others, they are much more numerous than the Francophone community. About 2.9 per cent.

So, yes, I think we would be prepared to look at other arrangements. The whole Section 133 would be tough sledding but if we are talking about courts, if we are talking about other services, we would sure give it a try. I think of it in the legislature, I think the only fully fluent Francophone in our legislature now is Randy Nelson who is a Swede and who happens to teach French in high school. Mr. Rousseau can speak some French, he grew up in Fort Francis and it is not the sort of center of French culture in Canada.

Mr. Mackasey: There could be more in the future?

Mr. Blakeney: Well, yes, exactly, but I say this not by way of denigrating our present group but only by way of saying that it is an effort that has to be made to deal with the problem, it is not something which is being denied a large group in Saskatchewan now.

The Joint Chairman (Senator Hays): This is your last question, Mr. Mackasey.

Mr. Mackasey: I do not think you have quite answered my question, perhaps because I did not state it properly, which was: would you accept Mr. Nystrom's amendment, the extension of Section 133, not only to New Brunswick and to Ontario but also to Saskatchewan?

Mr. Blakeney: Well, as I say, I think that would be tough sledding for us. If I were not out there alone, if I knew that all

[Page 43]

the provinces with a Francophone minority of more than 2.9 were there with me, yes.

Mr. Mackasey: Well, if we put the threshold at 2.9 you would perhaps be enshrining yourself in history, Mr. Blakeney, a place I think you deserve to be, but somebody has to be out front and this has always been one of the problems of this country.

Am I to take from that that your answer is no?

Mr. Blakeney: Well, I think the answer is, if you want Section 133 in its current terms, the answer is no. If you are asking if the entire contents of Section 133 is being rejected, the answer is no.

SECTION 133, LANGUAGE RIGHTS

Eymard Corbin & Allan Blakeney, p. 52

Mr. Corbin: [...] I do not know if the problem is basically one of money. The Premier of Ontario, who was recently involved in a by-election in the National Capital area, told us here that the basic reason for his refusal to extend Section 133 of the British North America Act to the Province of Ontario was a matter of money.

I cannot accept this. As a representative of one of the less rich provinces, as you pointed out in your opening remarks, would you be willing to accept that the federal government provide you with financial assistance for minority language education, provided there was no infringement of your provincial jurisdiction in this field? Would you accept financial support from the federal government to encourage the efforts which you are already undertaking?

[Text]

Mr. Blakeney: The short answer to Mr. Corbin's last question is yes. We would certainly have no great difficulty in working with the federal government, particularly in accepting their money, encouraging French language education.

The problems are not only money, There are problems of the perception that people in a small rural area see as to what is happening to their community.

Please understand that of the 64, I believe it is, rural school divisions in Saskatchewan, they average about 2,000 square miles and have about 1,000 students. So you have to comb 2,000 square miles to get 1,000 students. You have three, four or five schools tucked around there.

They have, perhaps, 100 students in five or six grades; perhaps 200 would be all that there are in the 12 grades. They are struggling to keep that number, struggling to maintain a level of facilities and good teachers, and the special talents would keep their school alive for their community, and if someone comes along and says "we want to withdraw this number, because these people want a French school" well, they should be entitled to the French school, but understand the position of the community. They say, "All right. There goes our school."

[Page 53]

But there is no way when you shear off those 23 we are going to be left with 150, 160 and so on and so forth. It is the struggle for survival of small communities in rural Saskatchewan which tends to make them resist fracturing; and we already have these areas fractured in a sense that with respect, in some areas, to, for instance, Roman Catholic separate schools and Protestant schools — of course French are a tiny minority of the Roman Catholic community, because the bulk of the Roman Catholic community would be German or Ukrainian as the case may be; and we have yet another fracturing.

It is perhaps a degree of insensitivity to the concerns of francophones in some of these areas but if you have fought this fight to keep your town or your village, I understand it. I can understand what motivates them.

SECTION 133, LANGUAGE RIGHTS

Now, I suppose there is no problem that money could not solve, and you could say you can have just as many teachers for half the number of students, but that gets you into all manner of problems in the next community which does not have any francophones and they say, "how comes it that we cannot get that much money for the same number of students," and on and on we go.

So those are the problems of government, and we are not asking for any sympathy. We are paid to solve those. But they are not black and white problems.

-----oOo-----

January 7, 1981: Lorne Nystrom, Archbishop J. Aurèle Plourde (Vice-President, Ontario Conference of Catholic Bishops), Professor Joseph Magnet (Legal Counsel, Ontario Conference of Catholic Bishops), Reverend Father Raymond Durocher (Expert Researcher, Conference of Catholic Bishops of Ontario), & Bishop Alexander Carter (President, Ontario Conference of Catholic Bishops), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 33, then scroll to p. 66)

Mr. Nystrom: [...] [*Translation*] and I agree that language rights are very important in our country and that, for Ontario, where there is quite a number of Francophones, the language rights should be entrenched in the constitution and I would like to put the following question to you.

[*Text*] So you said here that you thought that there should be a further extension of the growth of the official languages whether in a minority position than as outlined in Sections 17, 18 and 19 of the resolution before us. I wonder if you can tell us what you are thinking of here. Are you thinking of the extension of Section 133 for example of the British North America Act to the province of Ontario. Are you thinking of anything in addition to that and if so could you please elaborate.

Rt. Rev. Plourde: I think that you must realize that in fact there is no guarantees for the language rights in the constitution so far for French minorities.

Not only the consideration does not protect our language rights, but it can take it away as have been proven in the past, for example, when we tried to have religious education in French beyond grade 10 which existed before the consideration under the Union which had not been recognized by the Confederation and denied by the jurisprudence.

So, in fact, what kind of guarantee do we have, actually, in the French language for minorities like the Franco-Ontarians for example; we have nothing.

I am not at all sure that we could not argue a point here and say that when the Fathers of the Confederation said that our denominational rights would be recognized if implicitly they did not have the intention of ensuring the language rights as well, because, among the French group, French and Catholic was synonymous at that time. And when we talk about French schools they

SECTION 133, LANGUAGE RIGHTS

were necessarily Catholic and when we talk about Catholic schools for the French they were necessarily French, of course.

I think that the language rights could have been interpreted that way but the jurisprudence in Ontario did not do that, and they opposed it. So we have that strange school system where we have at the first level we have the religious right being recognized but not the language rights for the elementary schools.

We have, because Ontario can create, the legislature can create rights, they have acknowledged the rights of the language rights at the secondary level but not the religious right, so we have that system which one part of the system acknowledges or recognizes religious rights, the other part only lan-

[Page 67]

guage rights. What we want, we would like to have both religious and language rights recognized from 8 to 13 so that the parents who are the first responsible for the education of their children would really have those children educated according to their own conscience, and if there are now in a pluralistic society French people who do not belong to the Catholic faith, they could have their children educated in their language but they would not be forced to educate them in a denominational school.

Mr. Nystrom: Now, as to what article this refers, perhaps one more question here, you made reference to, if I recall, people being able to educate their children in the language of their choice or their conscience. That also applies I suppose to non-Francophones who may wish to educate their children in French. In other words, you would like to see enshrined a freedom of choice in the constitution.

Rt. Rev. Plourde: Exactly. Right.

Mr. Nystrom: Now, perhaps I will ask your distinguished legal counsel to comment on whether or not he thinks it is wise men to extend Section 133 to Ontario.

Professor Magnet: The Ontario Conference of Catholic Bishops supports the extension of Section 133 to Ontario.

Mr. Nystrom: Okay, was there anything else in language rights?

Rev. Durocher: I would just like to add a point, having been engaged in school battles in both Manitoba and in Ontario where the situation was quite difficult.

Reading back parliamentary debates, very much like these that are taking place here, in 1865, I think it is very useful to do that and I hope when they look back at your debates they will say the same thing.

There was no intellectual or principled approach to the question of religious education or demoninational education.

SECTION 133, LANGUAGE RIGHTS

It was not a question of the churches being established in Britain and therefore there should be some establishment here. It was purely a political decision.

If you were to read the debates, you will see that someone got up and said, "We, English protestants" not distinguishing between protestants and English. He said, "We, English protestants, are very well taken care of now; but we are not sure we are going to be well taken care of in confederation, because the Lord knows who is going to be in the majority." Therefore, he said, "We want guarantees of things now which we thought we would be getting eventually anyhow in Quebec." And he laid down two or three guarantees.

But the decision to do that had nothing to do with some position about religion or some position as regards language.

They did not say that churches and state be separate. Nobody thought about that. They said: "What do we have to

[Page 68]

do in order to get a Confederation?" There is in this country a long tradition of this kind of school, and it is very much adhered to at the present time and these people are not going to go into Confederation unless they have some guarantees that these things are going to be continued.

So it was decided that the denominational schools, in that case are meaning protestant English school in Quebec, would be guaranteed and they would have two or three extra things over the market, as they say in French, to sweeten the pie a little bit.

It was a purely political decision, a judgment about the things which are very important at that time to Canada.

There was no guarantee for the language at that time because it was not a problem.

When Mr. Cartier got up he said that somebody mentioned the dissentient English schools, and he said that there were no such schools in this province, that there were no dissentients; that there were was no right right of dissent on the ground of languages, because' there was no problem. Those who spoke French went to French schools. Those who spoke English went to the Protestant. But that did not mean it was not an integral part of Canada which they were putting together.

If I may return to one of Mr. Crosbie's questions, I think he said something about when do we stop looking into this question and exploring it.

Some hon. Members: It was Mr. McGrath.

Rev. Durocher: I am sorry.

But what I would like to say is this. If confederation were being debated today, there can be no doubt in anybody's mind that French would be entrenched. There can be no doubt about that, because there would be no Canada. That is exactly the argument which took place with regard to religion a hundred or so years ago and one which is still valid today.

SECTION 133, LANGUAGE RIGHTS

We do not want any religious wars in this country. We have a very good system going and we might as well keep on improving it.

I believe that Archbishop Plourde leans in in that direction, that it is one of the integral parts of Canada. It was not entrenched at the beginning because there was no problem at that time.

But now that we have grown and we have more problems, I think it is just as important to have entrenchment of the French as it is to continue entrenchment of the denominational schools.

Rt. Rev. Plourde: Could I add just one word to a matter raised by Mr. Nystrom.

I would members of this honourable Committee to understand well that when we ask for the entrenchment of rights for denominational schools, we are not going so because we want the schools to uphold the principles of our Church. We are not asking members of this Committee to recommend denominational schools because we want to help the Catholic Church. We are not seeking any favours for the Catholic Church.

[Page 69]

When we ask for Catholic schools, it is because we think that there are values in that type of teaching which is going to be of use to society as a whole.

Our stand on Catholic schools stems from the type of men and women we want to produce for society tomorrow so that society would be a better place to live in.

We are working and asking for that for the benefit of society and not for ourselves.

We are still being accused—and I think that is very back-ward—in certain quarters that we are doing this just to safeguard our Church and to produce vocations of priests.

I want to make sure that our position is well understood, that when we claim to have the right to denominational schools, we are simply asking the right to exercise our best contribution to the well being of our society.

Bishop Carter: Mr. Nystrom, you will note that in part 4 of page 9 we are reiterated what was said on the rights of denominational schools, and that was to underline the fact that we believe the denominational school rights and language rights become one.

That is why we took the trouble to reiterate in fourth article what we had already said generally in the third.

I think that ties up the question of the denominational and language rights in relation to the problems we face right now in Ontario and which we are trying to settle in this province.

Professor Joseph Magnet, p. 70

SECTION 133, LANGUAGE RIGHTS

Professor Magnet: We think it is the principle that is important. We think that the principle that Section 133 should be extended to Ontario is important. It does not rest on a numbers test.

And indeed, in most submissions before this Committee, the groups who have appeared did not take the position with respect to official language rights at Sections 16 to 20 that there should be a numbers test, save for the special case of Section 20; and we join and support that submission.

Now, on the separate question of minority language education rights, the proposed resolution, as drafted, fastens on a numbers test. We are not impressed with a numbers test. We are impressed with the principle, with the freedom of choice in minority language education rights. I think Mr. Mackasey would agree with me here, and, indeed many other groups which have appeared before this Committee have taken that position—the positive action group, for example, is one.

That is our position.

I think the point that Bishop Carter was trying to make, and made very well, and which I would like to re-emphasise is this. if you take a numbers test and make the right fasten on the numbers test, the difficulty is you would then have to answer at the legislative level precisely the kinds of questions you are asking. But we do not think these should be asked at the legislative level. We think the right is there. The implementation of that right is at present unforeseeable.

[Page 71]

Supposing, for example, that we gave freedom of choice in minority language education rights across the board, and we have a French speaking family in Northern Manitoba in a predominantly English area that demands a French school, it may be that the implementation of that right would not warrant a school, and it may be that the implementation of the right may not warrant a classroom; it might be that that right could be satisfied at the parents' option, sending their child to St. Boniface, if the parent so desires; in any case the onus would be on the legislature to make provisions to satisfy that right, and if the legislature takes steps which, in the opinion of the person entitled to that school, were not sufficient, then the courts can be called in.

That is the effect of our submission and how we think it should be implemented.

David Crombie, Professor Joseph Magnet, Bishop Alexander Carter, Bryce Mackasey, Archbishop J. Aurèle Plourde, Ron Irwin, & Mark Rose, p. 78

Mr. Crombie: [...] My particular concern, and I am going to leave the educational rights alone, I think there has been very adequate discussion on that, I might say as a person who was involved to some extent with a very large municipality in that province I well know the difficulty there is in terms of administration of an educational system given the current state of legislation, but I want to deal with rights as you see them in relation to the legislature and the courts.

The Solicitor indicated quite clearly that what he wants to do or thinks ought to be done is extend Section 133 to include the Province of Ontario. I have two questions: one, what does that mean in real terms to people's rights? What does Section 133 mean, and I say that advisedly because of the kind of glibness that we all understand what Section 133 really is and we tend to assume that

SECTION 133, LANGUAGE RIGHTS

Section 133 and Section 23 of the Manitoba Act of 1870 say the same thing, and indeed what happens in Manitoba is the same thing that happens in the Province of Quebec, and indeed there has been an even history in the Province of Quebec in understanding what Section 133 means to them, so my first question to you is: what does Section 133 mean to you, what rights does it confer or restore?

Then my second question is whether or not you see that that should be extended beyond the Province of Ontario to other provinces in Canada?

Professor Magnet: Well, let me take your first question first What does Section 133 mean? Section 133 in its terms

[Page 79]

gives a permissive right to the use of either official language before the courts and the legislatures, that is pretty narrow and that is what is meant until, or that is what it meant in 1867.

Now, that has been commented on judicially, most recently by the Supreme Court of Canada in the Foray and Blaikie cases, and in Foray and Blaikie the Supreme Court of Canada said Section 133 contains a principle of growth, and it has grown in the hundred plus years of Confederation now to include statutory adjudicative agencies of a quasi judicial nature.

Mr. Crombie: Can you give me one or two just as a guide to the slope? What do you mean by a quasi judicial nature?

Professor Magnet: A quasi judicial tribunal, an administrative tribunal like the CTC or the CRTC that is established by statute and administers comprehensive pieces of legislation and affects rights, privileges and expectations of individuals.

The Supreme Court of Canada has said such tribunals are now bound by the dictates of Section 133 and cannot avoid its discipline.

Now, further litigation is pending before the Supreme Court of Canada to clarify the ruling in the Foray and Blaikie cases. Does Foray and Blaikie extend the discipline of Section 133 to municipal institutions? That we do not know. What we do know is this: it extends to legislatures and courts, permissively, and extends to quasi judicial tribunals, and further it contains a principle of growth. I rather like the principle of growth and I am sure that this conference does, because, it means that over the long term Section 133 will finally come to redress some of the inequalities in the Canadian Confederation.

Mr. Crombie: Mr. Chairman, I can assure the solicitor that both in principle and in practice I will always favour the principle of growth, certainly as a personal event.

I would like to offer this thought: as I hear you, and with respect, I did not hear what Section 133 was, I heard how it was being extended and I appreciate that point, I appreciate the case, I know the case, I have read the case, and what concerns me is that people do not know what it means. What is it that is being extended?

SECTION 133, LANGUAGE RIGHTS

For example, you said the use. Now, no one has ever denied the use in the legislature. Does it mean, for example, simultaneous translation in the House of Commons? It did not happen until 1959 so clearly if it was a right, it was delayed. Does it mean that the proceedings, the statutes, the regulations and the journals should be made available in both languages and if it is not made so by one of the provinces, should it be done by the federal government. That is what people want to know, what does it mean to you?

Professor Magnet: Well, the votes and proceedings, the procedures there, I know Mr. Epp will know in Manitoba the

[Page 80]

votes and proceedings are taken down in the language in which the speech is delivered.

Now, is it really profitable to ask whether or not the discipline of Section 133 requires that it be translated? It may be that the group in Manitoba would want to litigate that question to discover whether the principle of growth takes Section 133 beyond its express terms.

Certainly statutory adjudicative agencies will not have been included in Section 133 in 1867 because there were very few, but now as the Confederation changes it is only fair in the spirit of equality of official languages that statutory adjudicative agencies be included.

I do not think I could assist this Committee by giving a list of everything that Section 133 contains. I can say that it contains the legislatures, the courts, statutory adjudicative agencies, and most importantly, and what this conference supports quintessentially, is it contains the principle of growth.

On your second question I think I have a very short answer, and that is does the Ontario Conference support the further extension of Section 133 to the other provinces? We have no mandate to speak for those provinces and I am afraid we will have to refrain from speaking on behalf of those other provinces. I am sure that groups from those provinces can speak for themselves.

Mr. Crombie: I have one final, perhaps it is a question, maybe it is a query, possibly a thought. There are a good number of people who would like to move in the direction which you suggest. One of the least fruitful ways, it has always struck me, Mr. Chairman, of doing that is to use phrases and numbers which are not understandable to people and can indeed be manipulated by other people for purposes which would frustrate the objective you are trying to achieve.

There are some people who argue, for example, that the extension of Section 133 is described as institutionalized bilingualism. I do not know what that means but it sounds awful, and I think that if people understood exactly what it does mean, they are not afraid of it.

For example, Section 133, and you would have tremendous influence if you went at it, I suggest, with this in mind, if people understand it to be the right of people to use either the two official languages in the legislature, the right to those two languages as spoken in the legislature to be available to the public in both languages, and that the right, before they send you to prison or hang you, if we were to still have that, to be done at least in your own language. That is what people want to know and understand . . .

SECTION 133, LANGUAGE RIGHTS

Professor Magnet: Well, I must say that I take very cold comfort from the fact that I am going to be hung in French, but be that as it may, if that is my destiny. . .

Mr. Crombie: You would hang in English.

[Page 81]

Professor Magnet: Let us do it in French.

Bishop Carter: Thank you very much, because you have said just what we really have implied, rather, perhaps then said, that you are exactly on, this does represent the thinking of the Bishops of Ontario right on.

Mr. Crombie: Thank you. Thank you, Mr. Chairman.

The Joint Chairman (Mr. Joyal): Thank you very much, Mr. Crombie, and you will understand why I have allowed your last question.

The honourable Bryce Mackasey.

Mr. Mackasey: Thank you, Mr. Chairman.

Bishop Carter, David does not understand that the Irish, particularly Quebec Irish, at times are closer to devil than they should be. So we are all the devil's advocate in that sense. . .

Bishop Carter: You come by it naturally.

Mr. Mackasey: And I want to take advantage of the occasion to say hello to you once again. I notice that you are now the President of the Ontario Conference of Catholic Bishops and I am just wondering if your organization gives the Cardinal much problem?

Bishop Carter: He gives us a problem.

Mr. Mackasey: I, like yourself, have had the distinct advantage of living in many parts of this country. As you know from our conversations, my parents arrived here from Ireland in Halifax, eventually to Quebec and finally on to Hamilton and now I am representing the very lovely constituency of Lincoln. Now, I have to be exceptionally nice to you if I want absolution periodically.

One of the things that concerns me about our deliberation is our tendency to look to the American experience, both in discussing jurisprudence, and it, concerns me a little because I think we are a unique country and our constitution has got to reflect our unique character. We have the built-in advantage, I think at this stage, as some members opposite have pointed out, of amending to some degree our constitution. We have the advantage of one hundred and some years of history, our own history not the American history, and it seems important to me that somehow we balance in this constitution the problems between individual rights and collective rights, such fundamental freedoms of association and religion.

SECTION 133, LANGUAGE RIGHTS

I think your counsel did a great favour by reminding us the American Constitution really discourages the creation of religion where ours encourages it. I would hope this continues and I do think that such a point is an extremely important one but somehow, in our anxiety to improve and protect the rights of minorities, to change the constitution to some limited degree, that we do not unintentionally destroy the better features of the BNA Act because one of the witnesses last night reminded us how effective the BNA Act had been because we are a relatively free society and despite our complaining at times it is the best country in the world and the BNA Act has had a lot to do with it, so I mention this only in saying that my own bias is that we not, in our anxiety to improve things, destroy

[Page 82]

intentionally some of the things that have stood the test of time.

I want to say, too, about Ontario, that one of the things that I have been seeing in Lincoln has been the concern of the Dutch Reform Group for their own schools. People tend to think of parochial schools as being something that simply the Catholics want, or the provinces in Quebec want, but the Dutch Reformists are saying that culture, language, religion are all part of a way of life and it is important to them that they be able to maintain and retain their schools in Ontario despite the fact that they are getting very little if any help in a financial way.

Another thing that I am listening to, which I do better than anything else, I think, listening to Counsel talk about the evolution of growth; being the devil's advocate, being Mr. Davis' advocate, could it be that Premier Davis, in his application of Section 133, that is to the courts, to the legislature, is proceeding through an appropriately called evolution of growth? In other words, is he really concerned that in enshrining in the constitution Section 133 to Ontario we may be at the same time unintentionally impeding the evolution of growth towards that same objective?

Perhaps Reverend Plourde might answer that, do you feel that there has been real progress in Ontario?

Rt. Rev. Plourde: Well, I am sure that if you were going to ask Mr. Davis if he is in favour of the principle of the evolution of growth he would say he is in favour of it.

I think that what has happened in Ontario recently in the rights of the minority field may be described as that. Of course, not to the satisfaction of the minority, but I think that nevertheless something has been done and we have to acknowledge that.

I would like, by the way, just to say that I often wonder at the wisdom of Mr. Mackasey, and now I understand why; it is because his ancestors stopped in the Maritimes before coming to Quebec.

Mr. Mackasey: That is right, and they are still moving.

Bishop Carter: I want you to realize that we did not approach this in any way to try to ape or to imitate the American system because the American system is very different from the Canadian. We are under the English parliamentary procedure and we have responsible government and the checks and the balances that are written into the United States Constitution would not apply here because we do not have the same type of government here. It would be a very different picture if

SECTION 133, LANGUAGE RIGHTS

we were writing a constitution and had an executive like they have in the United States and had legislature like they have in the United States and judiciary, the three powers that are deliberately set up to counter balance and to check each other. That is not our system.

[Page 83]

That is why we feel that that Charter of Rights should be specific, should be clear, but not loaded down with a lot of casuistry because that is not the history or not the juridical or the legislative or the historical development of our country which, after all, we came from the Union of Lower and Upper Canada, and in which each one conceded something to the other and Lower Canada would probably say that they conceded the most and had the worst part of the bargain; but the fact is we are starting once again now, if the BNA Act can be written into a constitution or developed into a basic constitution for the country, we are not thinking in terms, and the Bishops are not suggesting in terms as of a constitution such as they have in the United States, going down with all kinds of laws and amendments and legislative amendments over the years. We would like a Charter of Human Rights and recognizing that the condition of our country, the elements that make up the country, and to guarantee once and for all the basic rights of French and English speaking people to enjoy their language, their life and their culture right in through the schools, right in through the way of life; and that is not beyond our possibilities if we try to do it. That is our presentation.

Mr. Mackasey: Bishop Carter, are you suggesting, hopefully you are, a way of life that has evolved in Quebec through necessity and love and desire, the love/hate relationship between the minorities there, the English Quebecers and the French Quebecers produced a tremendous joie de vivre in the province unattainable in any other place in this country, and I have often felt if we could have bottled that tremendous relationship 10 or 15 years ago and spread that across this country. . .

Bishop Carter: Quebec has an enviable record of justice and courtesy, and I am sure that any momentary events will disappear and I do not think that that is . . .

Mr. Mackasey: It is said that the Quebec Irish have a particular mission in life and that is to spread it. One last question of Bishop Plourde. How important is it for the Franco-Ontarians to eventually obtain control over their own school system, school boards in particular.

Monseigneur Plourde: I think that the. . .

[Translation]

Mr. Mackasey: Answer me in French, why not?

Bishop Plourde: Fine.

I think that if the French do not obtain control over their schools, if school boards remain joint as they are at the present time, that is Roman Catholic French and English together, the schools will not disappear.

If, however, the French could manage their own schools, we would avoid tremendous misunderstandings throughout the Province of Ontario.

SECTION 133, LANGUAGE RIGHTS

Mr. Mackasey: Thank you very much.

Bishop Plourde: A lot could be added to that.

[Text]

The Joint Chairman (Mr. Joyal): Merci bien, Mr. Mackasey. I still have two names on my list and I see that our time is running out and our other guests this afternoon are waiting in the audience. I would like to invite Mr. Ron Irwin to ask a short question and Mr. Mark Rose to conclude. Mr. Irwin.

[Page 84]

Mr. Irwin: Thank you, Mr. Chairman. Because of the time restrictions I would like to question about the unborn, the native peoples, and the denominational schools but I will not. I will restrict my questioning to 133.

The honourable David Crombie brought up a good point. I want to read it because I think the role of the true revolutionary, and I include him as one, is to patiently explain.

Section 133 may be used by any person in debates of the Houses of the Parliament of Canada and the House of the Legislature of Quebec and both those languages shall be used in respect of records and journals of those Houses.

As I take that, that means only debate and following your point on growth you think simultaneous translation and record are part of that growth.

And either of these languages may be used by any person or in any pleading or process in or issuing from any court of Canada established into this Act and in or from all or any of the courts of Quebec.

Applied to Ontario, that would be all the courts, civil and criminal. There is some growth there. It is in the small claims court, into the district court, and I am happy to say in my riding of Sault St. Marie as of December 9 the city's first French trial was held and there was no fuss. There is a small French population of about three or four thousand people in Sault St. Marie and I am very proud that it has happened in my particular city this month.

It continues:

The Acts of the Parliaments of Canada and of the Legislatures of Quebec should be printed and published in both of these languages.

So we are talking about the records, journals and statutes and the Manitoba group and some of the associations, the Francophone group of Ontario do not want to go back to 1867. They would be happy from today forward if they had that right, so we are talking about very simple rights, the courts, the legislature and the records and journals. If again on your idea of growth perhaps the Ontario Municipal Board, maybe some day Municipal Council, offshoots of the provincial governments that are not part of the legislature.

SECTION 133, LANGUAGE RIGHTS

The situation here today, and we are getting very close to the end, is that the NDP are proposing an amendment and I thought the honourable David Crombie at one time was going to support that amendment without any hookers on it like time limitations or opting in, or part of a larger package, waiting three or four years or many, many things that are almost common in this Committee and the House. A simple amendment by the NDP, supported by Mr. Crombie and his group,

[Page 85]

would probably carry here and maybe become the law of Ontario because I cannot see Mr. Davis backing out if the interior caucus of the Conservative Party would support that. That is how close Section 133 is to Ontario. That is a political fact, a reality.

The difficulty is that we in the majority are carrying the whole package, the whole constitution, and have only Ontario's support and New Brunswick's support, and that is about it, the NDP national support. But that is how close Section 133 is to implementation, the courage of the Official Opposition to come up with an unadorned sponsorship of an NDP motion. That is the only point I wanted to make.

The Joint Chairman (Mr. Joyal): Thank you very much, Mr. Irwin. Mr. Rose. to conclude.

Mr. Rose: Mr. Chairman, if one looks at Section 16 over the page under the Official Languages of Canada talks about rights and privileges regarding languages and their use in all institutions.

Professor Magnet: Of Parliament.

Mr. Rose: Yes, well, of Parliament and the Government of Canada so that extends to a lot of boards and bodies, it seems to me, if that word worries some very prominent Canadians such as James Richardson who was here, who concerned himself greatly about that particular word "all" in Section 16 and to the point where it might lead. So there is growth. He would consider that probably unrelieved growth.

APPENDIX "CCC-10" Harmony in Diversity: A New Federalism for Canada (Government of Alberta), p. A:22.

XI ENTRENCHMENT OF LANGUAGE RIGHTS

Recommendation:

The Alberta Government recommends:

28. that the constitution recognize English and French as the official languages of Canada.

The **British North America Act** does not establish any official languages for Canada. The only substantive provision regarding languages is Section 133, which reads:

SECTION 133, LANGUAGE RIGHTS

Either the English or the French Language may be used by any Person in the Debates of the House of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislatures of Quebec shall be printed and published in both these Languages.

To a great extent, the principles contained in the **Official Languages Act** of Canada are those which the Alberta Government believes should be recognized in the Constitution, in acknowledgement of the bilingual nature of the Canadian federation.

The ten Premiers have recognized the need to provide education in either language, wherever possible. At the 1977 Annual Premiers' Conference, a resolution on language was agreed to which reads, in part:

Recognizing our concern for the maintenance and, where indicated, development of minority language rights in Canada; and

Recognizing that education is the foundation on which language and culture rest;

The Premiers agree that they will make their best efforts to provide instruction in education in English and French wherever numbers warrant.

The responsibility for providing minority language education services, however, must remain within provincial jurisdiction. The provision of these services primarily is an educational matter and must be determined by provincial legislatures.

-----oOo-----

January 8, 1981: Professor Gerard V. La Forest (Q.C. University of Ottawa) & Bryce Mackasey, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 34, then scroll to p. 44)

Professor La Forest: Yes, I agree with that. I would add that it should also have a few more symbolisms.

Mr. Mackasey: Well, maybe in the light of the times symbolism may not have been appropriate, just as we are talking sometimes about extending Section 133 to the provinces.

Professor La Forest: It is an excellent instrument.

Professor Maxwell Cohen (McGill University), p. 84

SECTION 133, LANGUAGE RIGHTS

Professor Cohen: I am not sure that the leap that you have made from the special case of Newfoundland can, with similar ease, be made elsewhere. Let me give you the very important Manitoba illustration. The Manitoba Act of 1870 was a document which in Sections 22 and 23 try to emulate for Manitoba what was done in 133 and 93 as the British North America Act, language and school protection rights.

Over the years we know what happened, until the Forest case came before the Supreme Court two years ago.

Now, there was a statute both of the Parliament of Canada and of the Parliament of the United Kingdom legalizing the entrance of Manitoba into confederation and the term under which it entered into it, and as Chief Justice Freidman in his very valuable judgment of the Court of Appeal pointed out Manitoba entered into Canada with certain ideas of the rights and conditions under which they were entering and when he interpreted Section 23 as he did he referred historically to these expectations, and the statute therefore had been violated all these years by the province of Manitoba perhaps without malice but certainly violated and therefore the ball game had to be changed, and the Supreme Court of Canada confirmed that view.

Now, those are cases resting specially upon the situation. If anything ever happened in any future amendment under the amending process, which violated the terms of union and the statute under which you entered confederation I would expect the Supreme Court of Canada to behave towards you exactly as it behaved towards Manitoba in the Forest case and say this is wrong and therefore it seems to me one must expect the history and law and document where they are on your side will essentially be able to take the result that you are now concerned about.

If you say, put aside for the moment the referendum question, I guess we cannot put it aside, a referendum technique which frightens members of the confederation system, or the federal system such as Newfoundland because you think it can bypass you. Nevertheless, that referendum technique will have to face the ultimate interpretation of the result where it affects Newfoundland the way in which the Supreme Court of Canada sees the terms of union.

Senator Connolly & Professor Maxwell Cohen, p. 96

Senator Connolly: Question No. 2 deals not with the individual, but with collective rights, with group rights, and as I see it there are four categories of these that are dealt with in the document: linguistic rights, which originally are in Section 93 of the British North America Act, but seem to be in Sections 16 to 23 here; secondly, denominational rights, particularly in respect of schools, they are dealt with in Section 133, as you know, of the British North America Act.

Professor Cohen: I am very sorry, it is the reverse, Section 93 and Section 133.

Senator Connolly: Sorry. It is just the other way around, yes.

And there is nothing here directly about denominational rights, except in the sense that Mr. McGrath talked about in connection with the possible changes that might come as a result of the application of the formula or a referendum.

SECTION 133, LANGUAGE RIGHTS

The third group are native rights, they are obliquely referred to in Section 24; the fourth group I think perhaps I categorize as ethnic rights.

Now, I wonder whether there might be some sense in redrafting, if we get to that stage of it, where we have a heading in the document talking about “group rights” or “collective rights” as distinct from the individual rights that are referred to in Sections 2 to 15, because while I have mentioned four different groups, there may be many other groups, undoubtedly there are many other groups that would like to see some reference to their immediate requirements in a constitutional document, and if we are to provide a framework do you think we should have such a framework in a document as it is being redrafted?

Professor Cohen: Well, thank you, Senator Connolly.

On your first question of enforcement, if you would be kind enough to look at the section on enforcement which the Congress brief submitted on pages 14 and 15, you will see there that we have strongly recommended that the Charter reflect the obligation of Canada under the 1966 U.N. Covenant on Political and Civil Rights which provides, under Article 9(5) that states members who are signatory to the covenant provide for enforcement procedures and we have

[Page 97]

drafted a Section 25(a) which we hope this Committee will take notice of.

Senator Connolly: What is the section in the International...

Professor Cohen: The International Covenant, Article 9(5). The enforcement and compensation one, and we have drafted Section 25(a) for your consideration and hope that you will look at it.

If you do not mind, Senator Connolly, I will give you a brief but very inadequate answer to your second question. The classical Anglo-Canadian, Franco-Canadian civil rights tradition has been individual, not collective rights. You and I had rights, the group as such was not known other than very, very special cases, I suppose. We did not have minority treaties as they had in eastern and central Europe. That was very unfamiliar ground to us.

However, life changes that and we now have, it seems to me, a political acceptance in Canada that there are a form of group identification that deserves constitutional treatment, native rights is one. We have it in the BNA Act, as you pointed out, in Section 93 and Section 133. And therefore, it does not surprise me that we should have reflection of that, and your Committee will have to look closely at the extent to which you could have it, but the final question you put before me is a more difficult one.

I have had this put before me before, Mr. Chairman, and I am sure you have had it in a much more sophisticated form. We have an official multicultural policy in Canada. Does one transmute that generalized multicultural concept into a constitutional concept? That is a very difficult question. My initial response is to say: “Let us by all means support multiculturalism, but if you ever entrench it, you are opening a series of doors that may be very difficult to manage, both politically, financially and legally. The provinces will have great trouble in handling many otherwise

SECTION 133, LANGUAGE RIGHTS

thoroughly integrated Canadian minorities who want their own particular cultural image reflected in the school curriculum, in teaching rights, etc., etc., etc.

I suspect, Mr. Chairman, that though all Canadians in this multi-ethnic society strongly support most ethnic cultural policies, it is quite another step to entrench them in a constitution per se.

Bryce Mackasey, p. 143

Mr. Mackasey: [...] I think we are all trying to do the same thing and I assure you I am not particularly pleased with the process. I have to say, however, that as a politician I do at times mistrust politicians and the process. You are absolutely right when you infer in your document that this represents a mistrust of our system, and I have got to come back to Premier Hatfield when he was here, who has not been mentioned quite as frequently as he should around this table because he has a great understanding, I suppose with his many years exposed to the Acadian people and their determination to survive and his understanding of the importance of that to this country, I think he has come out as a great Canadian, Mr. Hatfield, and when he was here he was discussing with Mr. McGrath and others, he said this, if I may reread it, he talked about 1971, being one of the few that was around at that time, and he said in that year we had a substantial number of problems and were prepared and said so, to go to their legislatures and ask that the official languages of French and English be recognized at the provincial level, or that Section 133 should apply to them. I wish I had the constitution of Canada in Canada, which is what you are saying, so that that agreement could have been put in that constitution at that time.

-----oOo-----

January 14, 1981: Jean Chretien, Bryce Mackasey, Perrin Beatty, Lorne Nystrom, James McGrath, Senator Tremblay, & John Fraser, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 37, then scroll to p. 27)

Mr. Chrétien: [...] The third item—the question of the so-called Section 133: you do not know how disappointed I am that Ontario did not want to join.

In 1970 they were ready to accept it. They said so in Victoria. They were also ready in 1978. Again, in June 1980, July 1980, August, 1980; and suddenly in September they said no. I am disappointed extremely disappointed.

But when you look at the whole project, at no time, never, has the national government decided to impose it on them. The national government has never decided to impose it on them.

We were ready with the text for them to be included because they had told us that they wanted to be included, just like New Brunswick.

We have the text for New Brunswick. It is in front of you today. Mr. Hatfield said that he would pass a resolution in his assembly, when that assembly resumed.

SECTION 133, LANGUAGE RIGHTS

Now, some of my colleagues were telling me that I should wait until it was voted on, but I did not. Mr. Hatfield had given his word. I took him at his word. Some would say that

[Page 28]

perhaps I was naive; but I would say that Mr. Hatfield on that subject has been extremely good.

He asked for it and he wrote to us, and he was saying that his assembly was not sitting at that time. In Ontario, the NDP Party is in favour; the Liberal party is in favour; but they do not want it imposed. The chairman of the committee on the subject is in favour. So they do not have very much to do.

So I do not understand why Mr. Davis does not want to bind himself there. Because he claims that already you can make speeches in the legislative assembly in Ontario; so why not have it entrenched in constitution, even if they do not go as far as Mr. Hatfield.

You were telling me that last week in Sault S. Marie for the first time there was a trial in French. There is not a revolution. Why not entrench it?

Of course, under the Criminal code we have used our powers and worked it out with them and now it is possible to have a trial in French in Ontario. Of course, there are still some technical problems about location and what not.

I believe Mr. Davis today would want to bind himself, because when he went to Quebec during the referendum he said that what is needed will be done. I encouraged him to go there at that time. I am very disappointed that he is not delivering.

[...]

Mr. Chrétien: If I may interrupt, I would like to make a clarification. In Ontario in 1970, they offered to bind themselves not to all, that is from Section 16 to Section 20 or Section 133, but some part of it.

Mr. Mackasey: Mr. Minister, two matters. You have given us the reason for not extending Section 133 to Ontario, in that you do not want to impose things on the provinces.

Surely there must be something more fundamental as well. You were expressing an opinion, and perhaps you do not want to repeat it here, but you do not want to jeopardize the passage of this human rights section, because there are other advantages or rights in there long overdue for recognition for the franco-Ontarians, for instance, in the field of language and education. In other words, you do not want to jeopardize those.

Mr. Chrétien: When I worked on that, one of the big problems I felt was that in my judgment, there was a big

[Page 29]

SECTION 133, LANGUAGE RIGHTS

problem in Canada since 1867, namely, that we had not inscribed in the Canadian constitution at that time the right for francophones to receive education in both languages, in French anywhere in Canada, and the same thing for the anglophones. Perhaps Canada would have been completely different today if that situation had existed then. Because that has cut down very substantially the mobility of the francophones in Canada, because they could not move wherever they wanted because there was no school. For us, our language and culture are extremely important. If we know we will lose it, then we will not move.

Knowing that, I felt it was extremely important to move in the field of education, and I felt it was quite appropriate to do so in the light of the Montreal and St. Andrews agreement of 1977 and 1978. So we moved, and we found it was not perfect, but decided to move with education first.

It was not too complicated. I suppose some will accuse it of creating some problems for the Quebec government in relation to Bill 101; but in fact, the treatment of the anglophone minority in Quebec was such, that even with Bill 101 was not affecting them substantially; but I was gaining in making equal the lot for the francophone outside of Quebec and to re-establish the right for the Canadians who spoke English who moved to Quebec to send their children as a matter of constitutional right to the school; because now Canadians moving to Montreal have to have permission to go to an English school. They do not have the right.

Mr. Mackasey: Am I right in saying that one of the concerns you have about the application of Section 133 to Ontario at this time is that you may jeopardize the total package and in so doing deny the constitutional recognition of French as the language of education anywhere in Canada?

Mr. Chrétien: It is clearly one of the dangers; it has been like that since 1970.

The Joint Chairman (Senator Hays): Thank you very much, Mr. Mackasey.

Mr. Beatty, a supplementary.

Mr. Beatty: Mr. Joint Chairman, I would like to get some clarification on a matter raised by Mr. Mackasey. It certainly whet my curiosity. Mr. Mackasey indicated — and the Minister agreed — that one of the reasons why the Minister had decided to impose Section 133 on Ontario was that by doing so it might jeopardize the passage of other rights in this package. What exactly does he mean by that?

Mr. Chrétien: We never intended to impose it on Ontario. I do not think it would be appropriate to change our policy at this time.

Mr. Beatty: That is another question. Mr. Mackasey asked you several times and you agreed to his final suggestion that you were not imposing Section 133 on Ontario because doing

[Page 30]

so might jeopardize the passage of other rights in the package. What did you mean by that?

Mr. Chrétien: I agreed to the statement by Mr. Mackasey that it will not help the situation.

SECTION 133, LANGUAGE RIGHTS

Mr. Beatty: Precisely, it would jeopardize the passage of the other rights in the package?

Mr. Chrétien: It is very clear. We have a package. We have a strategy, a system which existed since 1970. We said we would not impose it. Now we are at the eleventh hour and we are being asked to change completely our policy? I think it would not be appreciated by members of this Committee, because we made it clear in the summer, in the fall, that we were not going to impose it and would not impose it.

Mr. Beatty: Are you saying it is your judgment that the Liberal majority on the Committee would revolt and not support a decision to impose Section 133 on Ontario? Is that what you are implying?

Mr. Chrétien: We said that the government, as a government, were not going to do it. That is the answer.

Mr. Beatty: How, then, would that jeopardize the passage of the package? That is what I am asking you?

Mr. Chrétien: Because it would be a reversal of our policy at the eleventh hour.

Mr. Beatty: How will it be jeopardizing it?

Mr. Chrétien: In the matter of credibility.

Mr. Beatty: Are you saying the Committee would turn it down, or are you saying as a *sine qua non* of going forward to Westminster that you have the Ontario government's support for the package?

Mr. Chrétien: We have a package. Everyone knows it. We said all along that we were not going to impose Section 133 on any of the provinces if they did not want to apply it to themselves. At the eleventh hour we do not propose to impose it on Saskatchewan. I understand that the representative from Saskatchewan is very much in favour of Section 133; but I am sure that he is not proposing today to impose it on Saskatchewan; and I do not intend to! If I were to do so, they would have complete legitimacy in telling me that I have taken them by surprise in that I said that I was not going to impose it, and now at the last moment I am imposing it. So I will not do it, because I said that all summer as well as in the fall.

But I am tempted! I am tempted!

[Translation]

However, we must not fall into temptation. Deliver us from evil. Amen!

[Text]

Mr. Beatty: So what you are saying is that you are prepared to trade off what you consider to be a fundamental right for the support of Ontario for the entire package? You are

[Page 31]

SECTION 133, LANGUAGE RIGHTS

prepared to trade off what you consider to be a fundamental right for the support of Ontario?

Mr. Chrétien: I am not prepared to trade off the rights of anybody, because that has always been the policy of the government. It is well known for a long time.

But I do think that in the summer, and when we prepared the text, we had an understanding that they wanted it, just like New Brunswick; they wanted to bind themselves.

They were saying, "Yes, we are ready to go that far; but it might be that in that area it might take four, five or 10 years to implement it." We were having very honest discussions with them, until come September, all of a sudden from one night to the morning, it was no more; the discussions were not working anymore.

We had said to them that we were not going to impose it on them; the policy has remained the same.

But my disappointment is that Mr. Davis changed his mind come September, and you are in a better position than I to understand why.

Mr. Beatty: I want to thank Mr. Mackasey, Mr. Joint Chairman, for having raised this question.

The Joint Chairman (Senator Hays): Thank you very much. Mr. Nystrom, you have a supplementary?

Mr. Nystrom: Yes.

The Minister said that he is very frustrated. I am very puzzled. The Minister said that if Section 133 were applied to Ontario it would be an imposition on Ontario.

Why is it an imposition in one case and not in the other? There are many other rights for people in the resolution before us which are being imposed on provinces which do not agree; we have education rights being imposed on Quebec, and the Quebec government does not agree. Why is that not an imposition?

Now, all of a sudden, applying Section 133 to Ontario, why is that an imposition? What is the difference?

An hon. Member: Politics!

Mr. Chrétien: On educational rights we have given Canadians some rights. We are giving Canadians some rights; and in that case, what we are doing is that we are saying it is very much within the jurisdiction of the provincial government and it should be dealt with, as in the case of New Brunswick, by the legislature and the government of the province. I am not alone in asking for that. Mr. Ryan in his speech at the Empire Club last week said the same thing: "I want it, but it should not be imposed by the national government."

SECTION 133, LANGUAGE RIGHTS

We have always taken the view, that because it is the legislature, it is in the service of the provincial government, to put . . .

Mr. Nystrom: Why is it an imposition in one case? Because the nondiscrimination rights are an imposition in a provincial

[Page 32]

area, whether one agrees or not; the educational rights are an imposition in the provincial area, whether one agrees or not. Why are those not impositions, and all of a sudden the language rights pursuant to the courts and legislatures are an imposition?

Mr. Chrétien: I said that in education there was an agreement of the first ministers at St. Andrews and Montreal.

Mr. Nystrom: But Mr. Davis agreed at one time for Section 133 and now you say that he does not; there are some provinces that agreed in Montreal and now they do not. Why is that not an imposition when this is an imposition?

Mr. Chrétien: We said that we had decided not to impose that on the legislatures. That is clear.

Mr. Nystrom: I know it is very clear.

Mr. Chrétien: We could impose it; but we do not want to impose it.

Mr. Nystrom: I know it is clear, but why is it not an imposition but educational rights in terms of Quebec where Mr. Levesque said no, is not an imposition?

Mr. Chrétien: They had agreed to it—all of them.

Mr. Nystrom: Mr. Joint Chairman, he also said that Mr. Davis had agreed at one point; Mr. Levesque had agreed at one point; I follow your logic, and I ask you: why treat Quebec differently from Ontario? Quebec disagrees now; Ontario disagrees now.

Mr. Chrétien: It is because the educational rights apply to all Canadians in all the provinces in exactly the same way, and in the case of Ontario for Section 133 it applies only to one province and you would be forcing it on one province and not on the others.

If you want exactly the same pattern and to have it applied exactly the same to all Canadians, as suggested by Senator Roblin at our first meeting here who said that if Manitoba has it everybody should have it, then you would be in exactly the same position.

But now you are moving and singling out one province. This I do not want to do.

But if you want to apply it to Newfoundland, to B.C., and Saskatchewan as well, then, fine. Let us do it together, but not selecting. In the case of education they have all approved and we are giving exactly the same thing to all Canadians. But I will not single out one province like Ontario just in

SECTION 133, LANGUAGE RIGHTS

those circumstances, because it would be creating and applying something to that government which is not forced on other governments.

[Page 33]

But if you want to impose it on Newfoundland—that is another matter: do you want us to impose it on Newfoundland? Come on, McGrath, yes or no?

Mr. McGrath: I simply want you to be consistent.

Mr. Nystrom: Mr. Joint Chairman, the Minister has mentioned Newfoundland and Saskatchewan. I want to quote to him an authority and, I am sure he will agree with this authority. It is the Prime Minister of Canada, Pierre Elliot Trudeau, speaking in the House of Commons on Bill C-60 on June 27, 1978. He said on page 6785 of Hansard:

We think it would be unrealistic and probably impossible, within the future which I can foresee, to see the provisions of Section 133 which protect the English in Quebec apply in every province of Canada, but we do suggest that the provisions should protect French-speaking Canadians in Canada in those three provinces where 95 per cent of all francophone Canadians live, that is to say, New Brunswick, Quebec and Ontario.

I ask you, Mr. Minister, you are now bringing up the arguments of Newfoundland, Saskatchewan and Prince Edward Island. You are clearly going against the intent of your leader, the intent and politics that he has stood for for many years, his principles and so on, his caucus—and I know from representations made to me by members of your caucus: why are you doing this? Why is it an imposition in one case and not in the other? Can you please respond to this?

Mr. Chrétien: Yes, I will respond—with pleasure. Because in Bill C-60, it was an opting-in provision. It was not imposed. Just like now. Take the present constitution: if one province wants to impose it on its citizens, they can pass a resolution and we pass a resolution and they are bound forever.

In 1960, as today, we prayed for Ontario to opt in, just like in Bill C-60, the provision was not imposed. Mr. Trudeau said it was absolutely logical for Ontario to get in, but at no time was he imposing it. He was giving them the opportunity, the possibility, to opt in. It was not an imposition. The option is still there. Any province who wants to opt in can pass a resolution, you then pass a resolution in Parliament and they are locked in forever.

Senator Tremblay: No.

The Joint Chairman (Senator Hays): Order, please.

Senator Tremblay: It will take an amendment to the constitution.

Mr. Chrétien: Of course, that is what I mean. But you do not need the approval of the other provinces.

Senator Tremblay: It will need the approval of the other provinces.

SECTION 133, LANGUAGE RIGHTS

The Joint Chairman (Senator Hays): Order, please.

Mr. Fraser on a supplementary.

Mr. Chrétien: May I speak?

The Joint Chairman (Senator Hays): Of course.

Mr. Chrétien: We cannot have Section 133 or Section 12— look at Section 16 to Section 20 applying to New Brunswick—

[Page 34]

we could tomorrow amend and apply it to any province to have the same thing. If they want to do so, they only have to pass a resolution asking to have Section 16 to Section 20 apply to them, and if the Parliament of Canada approves it, it is done. The constitution has been amended in relation to that province to that effect.

The Joint Chairman (Senator Hays): Order, please. Mr. Fraser on a supplementary.

Mr. Fraser: When can I get the Minister's attention, Mr. Chairman.

An hon. Member: He has just been told that he is wrong.

Mr. Fraser: Through you, Mr. Chairman, to the Minister, Mr. Mackasey has talked about the fact that if Section 133 was imposed unilaterally by your government on Ontario, that it would put in jeopardy the other aspects of this proposal.

The Joint Chairman (Senator Hays): Supplementary on 133, Mr. Fraser.

Mr. Fraser?

Mr. Fraser: This is following along the exact point that the Minister has been discussing Mr. Chairman.

Mr. Mackasey asked you what in law is called a leading question, and he invited an answer and you were only too quick to answer, and you agreed with him.

You say that the reason you will not impose unilaterally on Ontario is because you have a policy and the policy is not to impose unilaterally with respect to language rights on just one province.

But this whole package is a unilateral imposition on provinces of a great many matters, and I fail to understand your distinction between not wanting to impose language rights on a province, and yet you are quite prepared to impose unilaterally amending formula which over half the provinces do not agree with.

SECTION 133, LANGUAGE RIGHTS

What I am suggesting to you, Mr. Minister, is that what you have done is, in order not to put in jeopardy, because you wanted some public opinion behind this entire proposal, and as what Mr. Mackasey must have been getting at, what you have done is you have sold out the French speaking Canadians in Ontario to try to get enough public opinion to put unilateral impositions of a number of things on all the other provinces.

Now, that is not what you have done then your whole explanation falls away and has no logical base to it.

Svend Robinson, Jean Chretien, Ron Irwin, Lorne Nystrom, Coline Campbell, Eymard Corbin, Sentator Tremblay, Roger Tassé, Q.C. (Deputy Minister, Department of Justice), p. 37

Mr. Robinson: Thank you. I do have a supplementary on Section 133. I also have a supplementary arising from Mr. Mackasey's questioning with respect to the handicapped, but my problem on Section 133, Mr. Minister, is this. One of the reasons for the haste with which the government has been moving, as a matter of fact the major reason as stated by the Prime Minister, was that following the referendum in the province of Quebec that certain promises had been made to the people of Quebec that there would be constitutional change.

If I am a francophone in the province of Quebec and I examine this proposed package carefully, what would strike me it seems very, very clearly is the fundamental lack of equity and the hypocrisy in the language provisions.

Now I do not understand, Mr. Minister, how it can be suggested that when these are the people that are certainly very important to us, that this is the justification for the speed with which we are moving, is it that we are particularly concerned about the francophone Quebecois, that 40 per cent who voted yes in the referendum who were overwhelmingly francophone.

When they look at this package, Mr. Minister, they say to themselves, well the anglophone minority in the province of Quebec has got protections here as a result of this package; they have protection here not just in education, Mr. Minister but they have protection through the provisions of Section 133 in the province of Quebec and yet the francophone minority, the largest francophone minority in this country, some 600,000 francophones in the province of Ontario are abandoned.

Now, how can you suggest, Mr. Minister, that this answers the concerns of that 40 per cent of the Quebecois who voted

[Page 38]

yes when they ask for equity, when they ask for fairness, which you as a Minister say as well, you have something on education that should satisfy you.

Why is it that you are not prepared to answer the very legitimate concerns of those francophone Quebecois who are asking for equity, who are asking for fairness and impose Section 133 on the province of Ontario, as we will be suggesting, and apparently, judging from the questions of the Conservative members, as they will be supporting.

SECTION 133, LANGUAGE RIGHTS

Mr. Chrétien: You know, you say that the Quebecois are asking for that. I was in the referendum and I made, personally, a lot of speeches and I repeated, all the time, the same thing: I said if the position is rejected by the Quebecers, we will have a new constitution patriated in Canada; that he will make in the constitution two official languages, that the law we passed in the federal Parliament will become part of the constitution; we will have a Bill of Rights that will protect the rights of the Canadians forever in the constitution. And I said, on minority rights, I have always said, at last, we will give the francophones outside of Quebec their rights to education that they never had.

We never spoke about Section 133 and its so-called institutional bilingualism. And the policy is well-known on top of it. I am not alone talking like that.

Mr. Ryan, for example—I agree sometimes with him, sometimes I do not agree or he does not agree with me—but in Toronto last week he said the federal government should not impose it. So how come you, coming from B.C., not willing to do anything for the francophones in B.C., tell me that we should do more than the leader of the Liberal party in Quebec wants to do at this moment.

You know, I think that it is very easy to be bleeding from where you sit and not coping with the reality. I am telling you that it is a very controversial problem and as much as I will be personally very satisfied if we could do it, and if Mr. Davis would not have changed his mind; you do not know how sad I felt when he changed his mind. But we have maintained the same policy and I am still asking all of you and anybody who can have any influence with Bill Davis to ask him to accept, to do for Canada what Hatfield has done and if you want more, it will not cost much for the people of B.C. because there is nothing.

When you talk about rights, rights are for everybody. So you go back in B.C. and you ask Mr. Bennett to say yes; and you ask our good friend Mr. Barrett to say yes: and Mr. Blakeney. And for Mr. McGrath to go and ask Mr. Peckford, and so it goes. You will be very good to Canada if you are able to persuade them to do that.

[Page 39]

It is not an easy problem, but I am telling you the policy has always been the same and we do not intend to change it at the end of an hour.

There is still time for Mr. Davis to change his mind. He came in Quebec during the referendum and he said so, that what is needed will be done and this had a lot of influence. And I can tell you, on top of it, some people did not want him to go to Quebec, and I encouraged him to go because it was a problem that counts on all Canadians.

It was not only a referendum that was a preoccupation for the Quebecois; it was a problem that was affecting the structure of Canada forever. And he went there.

And, come September, he changed his mind. I am not happy but it is his choice.

Mr. Robinson: Mr. Chairman.

The Joint Chairman (Senator Hays): On Section 133?

SECTION 133, LANGUAGE RIGHTS

Mr. Robinson: Mr. Chairman, yes, on Section 133, I regret that that is the answer to the francophone Quebecois and I would certainly be interested at some point in hearing from the Joint Chairman of the Committee from the Province of Quebec on this particular subject. Mr. Chairman, I think that might be relevant.

[...]

Mr. Irwin: [...] We have come to know each other over the last six weeks and I get the impression that if we were the Premiers of Canada, we would have solved the problem of Section 133 within about an hour. I mean, what is it really, the use of French in the courts and the use in the legislature and there are not that many people who would even speak it in the legislature if it were available.

But, getting to the Minister's suggestion, on the resolution from this Committee, or the fact that he would not be opposed to a resolution from this Committee asking Mr. Davis to state his opinion; perhaps if it were done in such a way that we do not even talk about Section 133; we talk about things that he is already doing, the allowance of French in the courts, the allowance of French in the legislature, it might be an appropriate part.

I would like to get to something very fundamental, Mr. Chairman. Being in the Liberal party I have a certain sense of the deep feeling there is amongst the francophone members on this particular issue.

They expect the anglophones—I consider myself an anglophone—to solve that problem the same way they solved the problem in Quebec as far as the rights of the anglophones there. They find it a humbling experience that they have to come here and keep forcing it and raising the issue. I think you all appreciate that.

That is why I say I see hope when I see a Scandinavian from Northern Saskatchewan and I think an anglophone from Great Britain, in the former Mayor of Toronto, and an Irishman who can talk about this and talk about it in such a way that we could reach the solutions. And maybe that is the way we have to go.

I think the problem is ours, Mr. Chairman, the English speaking Canadians.

Do we understand the concept of Canada; can we find a solution?

But coming from that, to you, Mr. Minister, we understand that you do not want it to breach any agreements that we have had over the last decade that we would not impose Section 133 on Ontario, what type of questions to the Ontario Legislature—I do not even know if you have thought about this—or to Mr. Davis, do you think would be proper in view of that government's policy at this particular time? Have you given it any thought or as a general concept is it something we should work out?

Mr. Chrétien: I am frustrated. I thought it would have been very consistent to what was expected if Ontario had accepted it like New Brunswick and there are more severe critics of Mr. Davis than that. It is not just me, it is Mr. Atkey. They both belong to the same party.

SECTION 133, LANGUAGE RIGHTS

If, as a member of this Committee, you can do something to put more pressure on Mr. Davis, that would be great. There are members of the Tory party here from all parts of Canada and there are some NDP members and some Liberal members

[Page 41]

from Ontario, especially the people from Ontario, the members and Senators from Ontario. If they want to put some pressure on Mr. Davis, fine, but my view is, like the view of Mr. Ryan, it should be done by the Legislative Assembly in Toronto to make the gesture. It is not a big price to pay. I do not understand.

Because, I have been 4 years a Minister, 18 years a member of Parliament and nobody can doubt what I am in terms of ethnic background and I do think that the people of Ontario will be quite pleased if the Legislative Assembly, following the traumatic experience of 1980, were to go that distance.

Mr. Irwin: Thank you.

The Joint Chairman (Senator Hays): Mr. Nystrom, on Section 133, supplementary.

Mr. Nystrom: Yes. A supplementary on Section 133.

And I want to preface this, Mr. Minister, by saying I feel very, very strongly about the future unity of my country. I want Canada to stay together and I really believe that one way of making Canada stay together is to treat Ontario and Quebec the same. I think that is very, very important.

And you said something in this Committee today that I did not know before and I think it is very important. You said that Mr. Davis had consented at one time to have Ontario bound by Section 133 of the BNA Act and I just wanted to ask you whether you can provide the Committee with the important information as to when he agreed and perhaps table documents to that effect.

Mr. Chrétien: It was not a final decision. I want to clarify that. In all of the discussions with the provinces in the summer Ontario had indicated to us, not in writing and so on, that they were to accept to be bound by Section 133, but they never made that a public statement. That was my understanding. In the type of discussion we were having at one time on some aspects of Section 133 or whatever it is, it might be Section 16 to Section 20, depending, the way you implement it. There was some discussion, for example.

Sure, we gave them five years to 10 years to adjust to the process and so on but they felt they could not put it in place right away and so that was the nature of the discussion.

Mr. Nystrom: But you said earlier that . . .

Mr. Chrétien: That they did not have to say a final yes or no, because we were in the process of negotiation and then came the conference in front of the camera in September, he said I am not going to do it. But I was really taken by surprise because I was led to believe that if we were to make some accommodation, you know, give them some time to adjust to it, that they would come

SECTION 133, LANGUAGE RIGHTS

along and suddenly they decided not to come along and I was disappointed. I am still very disappointed.

Mr. Nystrom: Did I hear you wrong? I thought I heard you say before that Premier Davis had said before, during the summer, that he did agree.

Mr. Chrétien: Did not agree.

[Page 42]

Mr. Nystrom: Did he say this to you? Did he say anything to the officials about it?

Mr. Chrétien: Not to me, no. The nature of the discussion was very clear.

Mr. Nystrom: Did he say it to your officials because you said Premier Davis had said he agreed.

Mr. Chrétien: I just gave you the explanation that we were discussion that and there was a lot of discussion and the trend was, I do not know if he said that to me, not to me anyway, but the others, precisely; he never made it the official policy of Ontario. But I just say that in the discussion that we were having with them I was led to believe when they were asking me could you entertain the possibility of giving us five years. I said, fine. 10 years? I said fine. So, when I say that, you know he never signed a piece of paper and said, I agree. That is not what I said. If you interpreted my words like that, it was not what I meant. I have been describing to you the process. It was well-known in the public.

The Joint Chairman (Senator Hays): Miss Campbell, on Section 133.

[Translation]

Miss Campbell: Mr. Minister, in the past, was there any agreement between the provinces and the federal government regarding trials before various courts in Canada?

Mr. Chrétien: Here is the situation.

Miss Campbell: I mean that they should be bilingual.

Mr. Chrétien: There are two kinds of trials. There are criminal trials and civil trials. I think that back in 1970, at the Victoria Conference, the premiers had accepted to be totally bound or virtually bound and as it is well known, Ontario went along. Obviously, Quebec and Manitoba had been bound since the BNA Act so there are vested interests there. If I remember well, amongst the provinces who had accepted in 1970 to be bound partially or totally by 133, there were Newfoundland and Ontario. To answer your question, with respect to the courts, only New Brunswick, Quebec obviously, and Newfoundland had accepted in 1970 to be bound.

Miss Campbell: Only those three provinces?

Mr. Chrétien: For the hearing of trials, yes.

SECTION 133, LANGUAGE RIGHTS

Miss Campbell: You mean for trials before the courts.

Mr. Chrétien: Since then, there have been bilateral agreements with the provinces and we have made a great deal of progress in this area as far as criminal procedures are concerned. I believe that a definite understanding was reached with Ontario with respect to criminal trials and is now in effect.

Miss Campbell: Then the amendment which you tabled does at least ensure, through Section 19 of the resolution, this right throughout Canada at the federal level at least.

[Page 43]

Mr. Chrétien: Before federal courts, trials can be held in either official language.

The Criminal Code does come under federal jurisdiction but the administration of justice is a provincial responsibility. We are negotiating with the provinces to reach a definite agreement on this point, we do have one with Ontario which is now in effect and things are working quite smoothly, from what I have been told, with New Brunswick and the Territories as well.

Mr. Hatfield, for example, made an offer to help Nova Scotia by making judges and legal counsel available, if necessary, to prepare, defend and present any cases. He did this as a gesture of courtesy towards the neighbouring province.

Administratively speaking, I think that it might be preferable to develop mechanisms allowing for a type of mobile court able to provide trials for the French speaking minority throughout Canada but this would give rise to complicated problems of jurisdiction.

[Text]

The Joint Chairman (Senator Hays): Thank you very much, Miss Campbell.

I go to Mr. Corbin on Section 133.

[Translation]

Mr. Corbin: Thank you, Mr. Chairman. Let me first of all make a brief comment. I have been a member of the House of Commons for 13 years. I was a member of the special committee responsible for the official languages legislation in 1969. At that time, I made efforts to obtain the recognition of Francophone rights outside of the provinces where they were traditionally respected and I was rebuffed by the then Minister of Justice. I did however enjoy the support of English speaking Liberal members of Parliament who went along with my point of view but, in view of provincial misgivings, we did not go as far as we had intended.

The same thing happened a year and a half or two years ago when the Criminal Code was amended to allow for trials in French. Some provinces once again expressed their reticence, the same reservations were voiced by the official Opposition and, following the report of the committee of the House of Commons, I even heard some disparaging remarks to the effect that Francophones had been done out of their due once again. What impresses me today is to see that finally the

SECTION 133, LANGUAGE RIGHTS

majority, not the political one, but the language majority group, is starting to show some understanding of this whole question. The fact is that basic rights are being flouted in this country, rights flowing from the British North America Act which are not extended to all French Canadians in the areas where they may happen to live.

French Canadians in Manitoba and Saskatchewan are not seeking a favour from the political majority, they are asking for the support of the English speaking majority in this country. This is why I was pleased to hear the remarks made by Mr. McGrath, Mr. Fraser, Mr. Nystrom and his colleagues because I think this realization is starting to come about, but

[Page 44]

not only will you have to convince Premier Davis, but you will also have to attempt to convince all the other provincial premiers to accept this point of view.

I do not want to receive something which is not given gladly. I do not want to receive something which is given grudgingly and, in this respect, I go along with several of the comments made by the Minister of Justice. This is not what French Canadians are seeking, Mr. Chairman.

It is for this reason that I would like to call upon that sense of fair play which has always been recommended to us and held up to our admiration in our history classes, even though in my day, the history taught in our New Brunswick schools was not the history of Canada but the history of England. I am asking that this sense of fair play be demonstrated by the provinces in settling this matter. The federal government is more than willing to co-operate, as the Minister of Justice has reaffirmed today. This is all we are asking for, we do not want any crumbs or anything which is not given willingly, gentlemen.

Thank you, Mr. Chairman.

[Text]

The Joint Chairman (Senator Hays): Thank you, Mr. Corbin.

Senator Tremblay on 133.

[Translation]

Senator Tremblay: Mr. Chairman, thank you for giving me the floor at this time. My remarks are related to Section 133 to some extent but, more particularly, to a point made by the Minister which I challenged and since it is important for the understanding of the draft resolution, I would like to bring this matter up once again to have my interpretation either confirmed or corrected by the Minister or the Deputy Ministers accompanying him.

I am referring to whether there is indeed an opting in formula with respect to languages. The Minister remarked that a resolution from the provincial legislature and the Canadian Parliament would be sufficient to have a province acquire the same status as New Brunswick, as far as this proposed resolution is concerned.

SECTION 133, LANGUAGE RIGHTS

From my reading of the proposed resolution, I would conclude that much more than this is necessary and that the amending formula in 41 or 42 would have to be used. This understanding is based on section 50 of the resolution which states that amendments to the constitution of Canada in relation to any of the following matters are to be carried out in accordance with sections 41 or 42, and among the matters mentioned is the charter of rights.

The extension of Section 133 would involve sections 16, 17 and 18, if my memory serves me right, which are part of the charter. Therefore, I take it that the procedure described in Sections 41 or 42 would have to be followed to bring in another province. Is this correct?

[Page 45]

Mr. Chrétien: You are right in that connection. A province may opt into 133 through section 43 which provides for a resolution of the provincial legislature and of Parliament but I will ask Mr. Tassé, who is better versed in the technicalities, to explain this to you.

Senator Tremblay: Yes, I would appreciate that.

Mr. Chrétien: I will ask Mr. Tassé to give you an answer.

Senator Tremblay: Yes, I would like to have the matter clarified.

Mr. Tassé: Mr. Tremblay, Section 133 will continue to be in effect once this legislation is adopted and it is one of the provisions to which an amendment can be made through Section 43. Section 43 provides that a provision of the constitution may be amended when it applies to one or more provinces but not to all of them.

It would thus be possible, under Section 43, to amend 133 in order to add a province such as Ontario by way of a resolution of the Ontario legislature and the House of Commons and the Senate of Canada. This would be a way for the Province of Ontario to bring itself under the provisions of Section 133 but such provisions are taken up again in Sections 16 to 20 and are applicable to Canada as well as to New Brunswick. It would be possible, should the Minister's amendments be made to Section 16 to Section 20, to add to New Brunswick other provinces.

Senator Tremblay: Not under 50?

Mr. Tassé: I was getting to that. In such a case, if it were decided to amend Sections 16 to 20 in order to add another province, the procedure described in Section 41 would have to be followed.

Senator Tremblay: I see.

Mr. Chrétien: The distinction is that if the bilingualism formula advocated by the federal government and New Brunswick is chosen, then the ordinary amending formula would apply.

Senator Tremblay: In that connection, then I was right.

Mr. Tassé: Sections 16 to 20.

SECTION 133, LANGUAGE RIGHTS

Mr. Chrétien: If a province wants to come under the obligations prescribed in Section 133, it does not need to use the amending formula. Its legislature merely passes a resolution, the same is done by the Parliament of Canada and the province then comes under 133 without resorting to the amending formula.

Senator Tremblay: A supplementary question, Mr. Minister. It is a technical matter but quite basic. I gather that either the province chooses to have its name added after that of Quebec and thus be bound by all the provisions of 133 or else it accepts only a part of the requirements set forth in the draft resolution and in that case proceeds under 41 or 42.

[Page 46]

Mr. Chrétien: Yes.

Senator Tremblay: Are we both fully aware of the implications of what has just been said?

Mr. Chrétien: Yes, indeed.

Senator Tremblay: This means that it is not Section 133 which is in the draft resolution but something quite different. **Mr. Chrétien:** Obviously, what I have been asked to do since the beginning of this afternoon is to impose 133 on Ontario, not Sections 16 to 20. I am being asked to impose 133 on Ontario and the mechanism is not the same.

Senator Tremblay: Therefore, there is a certain ambiguity which Mr. Nystrom might like to have clarified since the position they have always taken is in favour of extending 133 to Ontario.

Mr. Chrétien: Yes, of course. Extending 133 to Ontario; sections 16 to 20 do, to some extent, represent more than 133 . . .

Senator Tremblay: Rather less than.

Mr. Chrétien: Not less than but more than 133.

Senator Tremblay: Both more and less.

Mr. Chrétien: No, no. It is more than 133 because, in view of the situation in Canada at this point, it is probably marginally more but still it is more. Communications with government offices are not specified in 133 whereas they are in Clauses 16 to 20. In other words, the protection that francophone citizens of New Brunswick would enjoy henceforth, with the passing of Clauses 16 to 20, is greater than the protection that anglophones enjoy in Quebec.

Senator Tremblay: In a certain way, yes.

Mr. Chrétien: That is what I meant.

Senator Tremblay: In other respects, it is less.

SECTION 133, LANGUAGE RIGHTS

Mr. Chrétien: Here is the situation. There are some elements in clause 16 to 20 that are not found in 133. However, if there are elements in 133 that are not found in clause 16 to 20, I would like to know what they are. They are all there.

That means that New Brunswick will have for its francophone population a greater protection than Quebec has for its anglophone.

Senator Tremblay: Mr. Chairman, I thank you for allowing me to clarify this point . . .

Mr. Chrétien: That is what we are here for.

Senator Tremblay: I think that we have explained part of a possible misunderstanding.

Mr. Chrétien: This is what we are here for, Mr. Chairman.

-----o0o-----

January 15, 1981: Louis Duclos & Jean Chretien, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 38, then scroll to p. 79)

Mr. Duclos: [...] Does Section 133 of the Canadian Constitution reflect this legal equality of the two main language communities?

Mr. Chrétien: We would like it to be universally applied. But it must be remembered that the Canadian Constitution of 1867 provided different language guarantees to different provinces, and we have decided to take action in the field of education. As far as Section 133 is concerned, we will not impose it on all Canadian provinces, except those which willingly adhere, which we are pleased to say is the case for New Brunswick. We deplore the other provinces unwillingness to go along with such a measure in matters of provincial jurisdiction, that is with reference to their provincial legislature, their legislation and services.

Mr. Duclos: Mr. Minister, if I have understood you correctly, what you consider to be important is that certain principles be entrenched in the constitution. With reference to Section 23, for example, as far as the language of instruction is concerned, it is your intent to ensure, and I hope that I am interpreting you correctly, that no provincial legislature shall enforce or be in a position to remove such entrenched rights

[Page 80]

relating to the language of instruction. The only way to tamper with them would be to have a change made in keeping with the approved amending formula.

By the same token, that is acknowledging the need to entrench certain rights in the constitution, is it not just as important to guarantee Francophones rights to use French before Ontario courts as well as in the Ontario legislature, thereby preventing Ontario from withdrawing such rights in the

SECTION 133, LANGUAGE RIGHTS

future or from granting them sparingly? Is it not important, in keeping with the same principle, to impose on Ontario the same obligation as that imposed on Quebec, whether there is agreement or not?

Should not the same reasoning or principle apply to the Government of Ontario as well as the Government of Quebec and to other provinces, of course, which are not totally in agreement with the requirement to provide French education outside of Quebec?

Mr. Chrétien: Nothing is now being imposed on Quebec by 133.

Mr. Duclos: No, 23. Quebec does not agree with Section 23, Mr. Minister, as you know quite well.

Mr. Chrétien: No, but ...

Mr. Duclos: It will have to change Bill 101 because of Section 23 and in spite of its disagreement it will no longer have any choice.

Mr. Chrétien: We are ensuring certain rights in the field of education. Using the same logic, why do you not ask Mr. Nystrom why he does not want it to be applied in Saskatchewan?

Mr. Duclos: It is not Mr. Nystrom's problem nor is it mine.

Mr. Chrétien: Let me explain the problem. Why should we impose Section 133 on Ontario and not on the other provinces? Because of the size of the French-speaking population? It is not a matter of numbers. If we proceed in this way for education as far as the other provinces are concerned, we should have to do likewise in other matters. We have concluded, Mr. Ryan expressed the same opinion last week in Toronto, that such an initiative would have to come from the population of Ontario.

Mr. Corbin, a Francophone from outside of Quebec, stated yesterday to the Committee that such a step would have to come from the population. The provincial government is responsible for this and this has always been the government's position; 133 applies to Quebec, the equivalent applies to Manitoba because of rights flowing from the 1867 constitution and the Manitoba Act.

[Page 81]

New Brunswick is being brought in through the resolution and we shall continue to pressure the other provinces to do likewise.

Mr. Duclos: In that case, let us impose Section 23 on Quebec when the population of Quebec so decides in the same way as Section 133 of the constitution will be applied to Ontario at their request.

Mr. Chrétien: There is a great difference, because Section 23 enshrines in the constitution the agreement reached in Montreal in 1978 ...

Mr. Duclos: It is not correct to say that. It is not right! The province did not ask for this provision to be enshrined in the constitution, Mr. Minister. The provinces agreed on reciprocal agreements that might or might not have been revoked at any time if conditions in each province that was

SECTION 133, LANGUAGE RIGHTS

party to the agreement were to change. The situation is completely different. I do not want to hear that argument anymore.

Mr. Chrétien: Well, you have attended three of the sixty-four sessions ...

Mr. Duclos: I am not a member of the Committee, so ...

Mr. Chrétien: Nor are you obliged to ...

If you do not want to hear the arguments anymore, well you need not come. I will tell you what I said, I find your double standard quite shocking. For the first time in the history of Canada, we are going to give francophones the constitutional right to have French schools in Canada and we are telling Quebec that English speaking Canadians in Quebec will be entitled to the same type of education as francophones outside Quebec. If you do not want us to do that for French speakers, I am not very impressed with your nationalistic feelings.

Mr. Duclos: Oh for heavens sake!

Pierre Gimaïel & Jean Chretien, p. 91

Mr. Gimaïel: [...] To move on to another subject, you know that I come from Lac Saint-Jean, which includes the beautiful Saguenay-Lac Saint-Jean area, and I am proud of the fact that my region is the most francophone and possibly the proudest in Quebec. People are proud of themselves, of their language, of their region and of what they are.

Whenever language is discussed around this table, the debate revolves around the confusion of the situation and Section 133 of the Constitution. Mr. Nystrom has a certain advantage in coming here and saying that Section 133 should be forced on Ontario. It might also be advantageous for the 73 or 75 MPs from Quebec to say: This time, we can get Ontario. There are enough of us to impose Section 133.

What concerns me is that Ontarians themselves will be the most affected by this. Have we asked ourselves why Manitoba, which had Section 133 imposed 'on it, is also the province where the rights of francophones have been the least respected'? Have we asked ourselves why Quebec, which also had Section 133 imposed on it, is also the province where a separatist government is in power?

Could these extremist tendencies not be the result of the past? Are we going to make the same mistakes again? It would be nice for me, in particular, to go back to Lac Saint-Jean tomorrow and say how pleased I am that I forced Section 133 on Ontario. It might be pleasant for a francophone, but to what extent will franco-Ontarians and English-speaking Ontarians have to live with the consequences?

I know that over the summer, you talked to representatives of their government, both francophone and anglophone. I know that quite a few of the representatives of franco-Ontarians are conservative members of the legislative assembly and that their leader is opposed to having Section

SECTION 133, LANGUAGE RIGHTS

133 imposed on the province. We tend to forget that the proposed resolution, while it does not impose Section 133 on Ontario, accomplishes many other things in the area of language.

I am going to ask you a question so that I will be able to pass on information to my constituents who are wondering about various statements that have been made. My question is very simple. We are living in a country which is called Canada, which has laws and a constitution and two main languages. We are working on a proposed resolution which will result in a charter of rights protecting the fundamental rights of Canadians.

My question is this: Once the Charter of Rights is included in the Constitution and it is brought back to Canada, how will the situation with respect to language rights differ from what it is today?

[Page 92]

Mr. Chrétien: That is a good question, because we tend to forget what has been done to date. If you look at the charter, you will see that in Section 16 to 20, important rights are being enshrined in the Canadian Constitution and that French and English are the official languages of Canada. This is not just an act of Parliament; it is now included in the Charter of Rights.

Both languages have equality of status and equal rights and privileges as to their use in all institutions of the parliament and the Government of Canada and this can never be taken away. The government in Ottawa could not revoke those acquired rights. If we accept the Victoria amending formula without the approval of the citizens or the Government of Quebec, even if the majority were against the clause, it remains in the Constitution. It is enshrined in the Constitution and cannot be revoked by the Parliament of Canada. It could only be revoked with the approval of the Province of Quebec, if that province accepts the Victoria formula or something similar which gives Quebec the veto. The same thing is true of Section 16 to 20. These sections guarantee the rights of Francophones in dealing with federal institutions and that is something that is completely forgotten.

We also forget that for the first time in Canada, Francophones outside of Quebec and Anglophones in Quebec will have the constitutional right to be educated in French. Also, the courts will be able to determine that there has been discrimination, require that the problem be resolved and grant compensation to individuals if necessary. These are things we tend to forget. We are concentrating on something we would like to have but cannot, because it was decided in 1978 that this would not be imposed. I was very impressed by a remark made yesterday by Mr. Corbin, who is a Francophone from New Brunswick. He said that things looked very well in New Brunswick and that the government wants it to be done, but they do not want it to be imposed by Ottawa.

You have heard French-speaking members of the Legislature of Ontario saying that it should not be imposed, that it should be done by Ontario. Mr. Ryan said the same thing at the Empire Club in Toronto. He said that it has to be done by Ontario. Mr. Stewart Smith, the liberal leader in Ontario, said that he was for it, but it should not be imposed. It is a political problem that has to be dealt with in Ontario.

In the light of these remarks and of what I have just said, I think that considerable progress has been made. There is a tendency to want to go to extremes and the legislation that is proposed is never perfect. We sometimes have to put up with situations that are less than ideal. Personally, I

SECTION 133, LANGUAGE RIGHTS

am very impressed with the progress that has been made. What really impresses me is that the clause in French education in other

[Page 93]

provinces has not, I am happy to say, given rise to controversy anywhere in Canada.

If I think back to what it was like when I was first elected to Parliament in 1963, I did not think that we would ever reach that point. There are of course other issues but no one protested. No one came before this committee during the past three months, from any province in Canada, and said that the right to education in French should not be enshrined. No one said any such thing. Some people bitched about the process, but no one dared attack the substance of what we are doing. I am far more impressed by this than by comments that are made on the form. What I am interested in is the substance. I think we have made considerable progress and I am very proud of it.

-----o0o-----

January 15, 1981, Debate in the Senate, pp. 1522-23 (click [HERE](#))

-----o0o-----

January 20, 1981: [Jean-Robert Gauthier](#), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 41, then scroll to p. 34)

Mr. Gauthier: [...] I would also want to serve notice to my colleagues of the Committee that the residents of the provinces subject for example to Section 133 of the BNA Act or 23 in Manitoba, must understand that their rights are not greater than mine in Ontario if they should come to visit me here, or if they should come to live in Ontario, and Mr. Chairman, before accepting the constitutional proposals dealing with the right to education in the minority language, I want to be quite sure that those legal provisions which appear to be equal, will not be applied unequally.

My interest in my life as a franco-Ontarian obliges me to demand clear and precise explanations in this matter.

[Svend Robinson](#) & [Robert Kaplan](#), p. 41

Mr. Robinson: A short supplementary on the question of language rights.

I certainly appreciate the points raised by Mr. Gauthier. But one of the points raised earlier by witnesses was with respect to the possibility that, pursuant to Clause 43 of the proposed charter of rights, the language rights which presently exist under the provisions of the British North America Act, with respect to the Province of Quebec and also the provisions of the Manitoba Act with respect to franco-Manitobans, that those rights could be swept aside by a simple agreement between the province involved and the federal government under Clause 43.

SECTION 133, LANGUAGE RIGHTS

Have you considered the possibility of adding to Clause 50, a section which requires certain fundamental matters to the constitution only to be made pursuant to the more elaborate provisions of the greater safeguards of Clauses 41 and 42; have you considered adding to those the existing provisions which protect language rights, to prevent these being bypassed by an agreement between, for example, the Province of Manitoba and Canada, which would remove the rights of franco-Manitobans?

Mr. Kaplan: I would like to draw your attention, in Clause 43, to the fact that you said it was the federal government. But it would require the federal Parliament, and this is a substantial safeguard in itself, and one which the government considers adequate.

Mr. Robinson: Are you saying that these rights can be taken away, rights under Section 23 of the Manitoba Act or Section 133 of the British North America Act—that those rights can be swept aside by an agreement made between the provincial legislative assembly and the federal Parliament? You find that adequate-protection of those rights?

Mr. Kaplan: Well, given the rights which are created under this charter, which are quite farreaching, the rights that the charter protects, of course, would continue to survive—would survive.

But your point is valid. The Parliament of Canada and the particular province could change the rights to which you have referred.

-----o0o-----

January 20, 1981, Debate in the Senate, p. 1545 (click [HERE](#))

-----o0o-----

January 21, 1981: Roger Tassé Q.C. (Deputy Minister, Department of Justice), [Jim Hawkes](#), & [Robert Kaplan](#), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 42, then scroll to p. 17)

Mr. Roger Tassé Q.C. (Deputy Minister, Department of Justice): Well, some members may, Mr. Chairman, recall that the authority of Parliament to pass the Official Languages Act had been challenged in court and the argument that had been made was, if I recall correctly, that in effect Parliament did not have the authority, that Section 133 of the BNA Act dealt with the language rights so far as the federal institutions were concerned, and that Parliament did not have the authority to go further and add to the status or extend the status of official languages in Canada.

The court said no, that is an authority that Parliament has, and in effect we just want here to confirm that understanding that Parliament and the legislatures authority to add to the status or to deal with languages, English and French, is not affected by the Charter. So this does not deal with the kind of situation that Mr. Hawkes is referring to. Mr. Kaplan: You see, Mr. Thorson's argument, again as I understand it, was that since Section 133 established a status for the English language in

SECTION 133, LANGUAGE RIGHTS

the Province of Quebec, Parliament could do nothing more to enhance that status. The argument was rejected by the Supreme Court of Canada I and this language really puts into legislation, puts into our Charter the principle that the Supreme Court of Canada established in that case.

Mr. Hawkes: Does that have the effect in constitutional terms, then, of empowering the Parliament of Canada, the federal government, to operate on that principle even if it is in an area of provincial jurisdiction, for instance?

[Page 18]

Mr. Kaplan: Well, the formulation of the question forces me to indicate that this section does not authorize any legislation to be passed or any programs to be introduced. It says “nothing limits”, so that the foundation of legislative authority has to be sought elsewhere, outside Clause 16(3), and what this provision simply provides is that the Charter itself should not, with all of the attention that it does pay to language issues, should not be interpreted so as to prevent, exactly as it says, the advance toward equality of either of the official languages of our country.

I could refer as well to Clause 28 which is relevant, which says that nothing in this Charter extends the legislative powers of any body or authority, so that it is a confirmation of the finding that is already part of our law, that was settled in that Supreme Court of Canada case and elsewhere.

Mr. Hawkes: And the clause, if I could get clarification again, but if there is a program or piece of legislation passed which perpetuates or intensifies the inequality of language, then it is your legal opinion that this clause could not be used in a court of law, the Supreme Court of Canada, to find that piece of legislation as having no force and effect? In other words, it would have no relevance to a case of that kind?

Mr. Kaplan: That is right. Legislation like that would have to be challenged on some other basis, if it is challenged at all.

-----o0o-----

January 29, 1981: Bryce Mackasey, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 48, then scroll to p. 68)

Mr. Mackasey: [...] The English speaking Canadians and English speaking Quebecers are also proud of their language and their culture. and 95 per cent of them do not have any guilt complex about recent events, they cannot trace any time when they have practised discrimination. Certainly the railway workers in Verdun or Notre-Dame-de-Grâce represented by Warren Allmand or others are hardly in a position to discriminate, and the discrimination from the business community in Westmount was just as strong against an Irishman on James Street as it was against anybody else. We all know what it is.

[Page 69]

SECTION 133, LANGUAGE RIGHTS

However, what we are talking about here, fundamentally, are the rights of French speaking Canadians in Ontario that exist under tolerance, not as part of a constitution, but in provincial legislation. Mr. Crombie is not suggesting, as he said, that we include in this Charter the extension of Section 133 to Ontario. I am not going to question whether that is consistent with his first argument of many weeks ago, it is unimportant, I know that he is tortured, in good faith, on the issue, I know he would like to do that, I know we would all like to do it and we are torn on one hand with our sense of what should be, and our concern of somehow creating the type of backlash in Ontario that would negate the ten years that Mr. Crombie talked about so eloquently and factually, the progress that has been made in that province.

I do not pretend, Mr. Chairman, to say much more other than the amendment that is before us to me is superfluous in the sense that the same thing—not superfluous in the sense that it does indicate good intentions, but superfluous in the sense any time Ontario wants to extend the right, not the Charter but in the constitution, to French speaking Canadians in the courts and the legislature, it can do so through Clause 43. Nobody can visualize the federal government and the Parliament refusing such a request if it came from the Province of Ontario.

So if some of us hold our options as to how we vote on the amendment, I would hope that it is not interpreted at the time, I know it would not be by Mr. Crombie, as against his instincts or that of Mr. Nystrom. My concern when we arrive there is whether or not this is not superfluous, Mr. Chairman, I know that I have gone beyond my time but we have really moved a lot of clauses and I can only speak for myself again in suggesting, yes, Mr. Crombie, we share your sentiments but ironically we are not going quite as far as we should be.

There are two things I would like to see before I leave Parliament: that right to French speaking Canadians enshrined in the constitution, not only in Ontario but everywhere; and I would like to see freedom of choice brought back to the Province of Quebec so that new Canadians coming to that province have a choice to be educated in either language. They are both fundamental to me.

-----oOo-----

February 4, 1981: Robert Bockstael & Jean Chretien, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 53, then scroll to p. 66)

Mr. Bockstael: Thank you, Mr. Chairman. I would like to ask the minister a question so that his reply will appear in the official minutes and proceedings.

Mr. Minister, any time throughout our discussions on this proposed resolution, you have given us the assurance that some clauses were protected by different sections. For example, we were told that our concerns about Section 50 were met in Section 43.

Now, to dispel any of the fears of the people in Manitoba whom I represent, I would ask you to consider the following, provision of Section 50:

SECTION 133, LANGUAGE RIGHTS

An amendment to the Constitution of Canada in relation of the following matters may be made only in accordance with a procedure prescribed by Section 41 or 42:

Now, the Francophones in Manitoba are extremely concerned that the rights granted under the Manitoba Act of 1870 could be taken away from them one day by a unilateral action of the Manitoba government. Would it be necessary to add the words “Section 23 of the Manitoba Act” as a subsection (h) to Clause 50 so that it could not be changed without prior approval or without applying the procedures prescribed in Sections 41 or 42.

Can you assure us that their rights will be protected? Or, do you agree that another subsection should be added to clause 50?

Mr. Chrétien: Well, like Section 133, since the Manitoba Act is in the Constitution, it cannot be amended without the consent of the Parliament of Canada. It is a provision which applies only to Manitoba and, therefore, can only be amended by that province and by the Government of Canada.

[Page 67]

I would like to assure the Francophones of Manitoba that their rights to education in French are reaffirmed in Section 23. In addition to the guarantees they have under the Manitoba Act for matters relating to education, Section 23 has granted them a constitutional right which grants all Franco phones outside Quebec the same educational rights as the Anglophones in Quebec. Also, to amend Section 23 would require the consent of several provinces. In this way, Francophones in Manitoba have the double protection of the Manitoba Act and Section 23, regarding education rights, which can only be amended through the amending formula of Sections 41 and 42.

So, it is unnecessary to mention the Manitoba Act or Section 133 at Section 50 because it is a strictly bilateral matter, if I may use that expression, between Manitoba and Canada.

-----o0o-----

February 18, 1981, Debate in the House of Commons, p. 7441 (click [HERE](#))

-----o0o-----

February 23, 1981, Debate in the House of Commons, p. 7566 (click [HERE](#))

-----o0o-----

February 26, 1981, Debate in the House of Commons, p. 7736 (click [HERE](#))

-----o0o-----

February 26, 1981, Debate in the Senate, p. 1880 (click [HERE](#))

SECTION 133, LANGUAGE RIGHTS

-----o0o-----

March 2, 1981, Debate in the House of Commons, pp. 7810-7811, 7814 (click [HERE](#))

-----o0o-----

March 2, 1981, Debate in the Senate, pp. 1895-96 (click [HERE](#))

-----o0o-----

March 3, 1981, Debate in the Senate, p. 1928 (click [HERE](#))

-----o0o-----

March 4, 1981, Debate in the House of Commons, p. 7907 (click [HERE](#))

-----o0o-----

March 5, 1981, Debate in the Senate, p. 1965 (click [HERE](#))

-----o0o-----

March 10, 1981, Debate in the House of Commons, p. 8103 (click [HERE](#))

-----o0o-----

March 12, 1981, Debate in the House of Commons, p. 8178 & 8189 (click [HERE](#))

-----o0o-----

March 13, 1981, Debate in the House of Commons, p. 8233 & 8246 (click [HERE](#))

-----o0o-----

March 16, 1981, Debate in the House of Commons, p. 8282 (click [HERE](#))

-----o0o-----

March 17, 1981, Debate in the Senate, pp. 2081 & 2083 (click [HERE](#))

SECTION 133, LANGUAGE RIGHTS

-----o0o-----

March 18, 1981, Debate in the Senate, p. 2107 (click [HERE](#))

-----o0o-----

March 19, 1981, Debate in the House of Commons, p. 8417 (click [HERE](#))

-----o0o-----

March 23, 1981, Debate in the House of Commons, pp. 8514-15, 8523 (click [HERE](#))

-----o0o-----

March 25, 1981, Debate in the Senate, p. 2155 (click [HERE](#))

-----o0o-----

April 1, 1981, Debate in the Senate, p. 2213 (click [HERE](#))

-----o0o-----

April 21, 1981, Debate in the House of Commons, pp. 9344, 9346, & 9361 (click [HERE](#))

-----o0o-----

April 22, 1981, Debate in the House of Commons, p. 9403 (click [HERE](#))

-----o0o-----

April 23, 1981, Debate in the House of Commons, p. 9430 (click [HERE](#))

-----o0o-----

April 23, 1981, Debate in the House of Commons, p. 9444 (click [HERE](#))

-----o0o-----

April 23, 1981, Debate in the Senate, pp. 2347-48 & 2358-59 (click [HERE](#))

SECTION 133, LANGUAGE RIGHTS

-----o0o-----

April 24, 1981, Debate in the Senate, pp. 2365, 2370, 2372, 2375-77, 2380 (click [HERE](#))

-----o0o-----

November 9, 1981, Debate in the House of Commons, p. 12639 (click [HERE](#))

-----o0o-----

November 20, 1981, Debate in the House of Commons, p. 13048 & 13058 (click [HERE](#))

-----o0o-----

November 23, 1981, Debate in the House of Commons, p. 13134, 13139, & 13146 (click [HERE](#))

-----o0o-----

November 24, 1981, Debate in the House of Commons, p. 13159 (click [HERE](#))

-----o0o-----

November 25, 1981, Debate in the House of Commons, p. 13279 (click [HERE](#))

-----o0o-----

November 26, 1981, Debate in the House of Commons, p. 13296 (click [HERE](#))

-----o0o-----

November 26, 1981, Debate in the House of Commons, pp. 13360-61 (click [HERE](#))

-----o0o-----

November 27, 1981, Debate in the House of Commons, p. 13384 (click [HERE](#))

-----o0o-----

November 27, 1981, Debate in the House of Commons, p. 13440 (click [HERE](#))

SECTION 133, LANGUAGE RIGHTS

-----o0o-----

November 30, 1981, Debate in the House of Commons, pp. 13518, 13524, 13526-27 (click [HERE](#))

-----o0o-----

November 30, 1981, Debate in the House of Commons, p. 13533 (click [HERE](#))

-----o0o-----

December 1, 1981, Debate in the House of Commons, pp. 13591, 13611, & 13614-15 (click [HERE](#))

-----o0o-----

December 4, 1981, Debate in the Senate, pp. 3231-33 (click [HERE](#))

-----o0o-----

December 7, 1981, Debate in the Senate, pp. 3283, 3286, 3290, 3294 & 3297 (click [HERE](#))

-----o0o-----

December 8, 1981, Debate in the Senate, p. 3385 (click [HERE](#))

-----o0o-----