

S E C R E T

Possible Amendments for Quebec

Any proposition for change to the Accord of November 5, 1981, should be assessed against the following objectives:

1. the support of the group of 9 provinces to the amendments. (The unanimous support of all nine provinces is an essential precondition to the acceptance of any further amendment to the Resolution);
2. the support of the Quebec Liberals to the Resolution, as amended;
3. the support of the people of Quebec for the Resolution, as amended;
4. minimum of delay in presenting the amendments to the House of Commons.

There are 3 possibilities to be considered:

1. Financial Compensation:

- (a) a constitutional guarantee of financial compensation for provinces opting out of constitutional amendments dealing with education and possibly other matters relating to culture;
- (b) a constitutional obligation, as in the case of natives, to discuss the question of financial compensation where a province exercises its right to opt out in areas other than education (and possibly culture), at a conference of First Ministers to be held within a year after the coming in force of the Constitution Act 1981;
- (c) a constitutional obligation for the Prime Minister to include on the agenda of the first First Ministers' Conference after an amendment is approved the issue of compensation for any province which has opted out.

2. Mobility Rights:

Allow for a "non obstante" by a province where the exercise of the right of mobility would substantially alter the linguistic equilibrium of the population of that province. (This is preferable to Ryan's proposal, from

a technical point of views, but meets the same objective).

3. Minority Language Education Right:

(a) Opting in for Section 23 as whole for Quebec.

or

(b) CANADA clause only is brought in force in Quebec. Under the Quebec Clause of Bill 101, the children of the mother or father who has received in Quebec his or her primary education in English are entitled to receive their education in English in Quebec.

The Quebec Clause becomes the Canada Clause by providing that the children of the mother or father who has received in Canada (instead of Quebec) his or her primary education in English are entitled to receive their education in Quebec. The Canada Clause test is now embodied in S 23(1)(b) of the Resolution. But Section 23 goes much beyond the Canada Clause by extending the minority language education right to citizens of Canada whose mother tongue is English (in the case of Quebec) (S. 23(1)(a)) and to citizens of Canada who do not meet the Canada Clause test nor the mother tongue test (e.g. an Italian born in Italy) but whose children have already started their education in English, to continue their education in English in Quebec.

In the result, S. 23(1)(a) (mother tongue test) and S. 23(2) (rights of citizens that do not meet the mother test or the Canada Clause test but who have children who continue their education in English) completely alter the meaning and substance of the so-called Canada Clause by extending the right to minority language education much beyond those who have received their primary education in Canada.

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If it is decided to transform the Quebec Clause into the CANADA Clause there is a need to provide either for an opting in, or an opting out or a non obstante for Section 23(1) (a) and 23(2).

The advantage of the non obstante over the opting in is that it might be easier for a Quebec government to decide to be bound if it knows that it will be able to cope with a situation which might arise contrary to all expectations through the use of a non obstante. With an "opting in", a province is locked in without any possibility of derogation whatever happens. The advantage of the "non obstante" over an opting out is that the "non obstante", which is a kind of opting out, must be reviewed every five years.

Minority Language Educational Rights

Droits à l'instruction dans la langue de la minorité

Language of instruction

MOTHER TONGUE TEST

"CANADA CLAUSE" TEST

23. (1) Citizens of Canada (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

Continuity of language instruction

RIGHT TO CONTINUE INSTRUCTION IN SAME LANGUAGE

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Langue d'instruction

23. (1) Les citoyens canadiens : a) dont la première langue apprise et encore comprise est celle de la minorité francophone ou anglophone de la province où ils résident,

b) qui ont reçu leur instruction, au niveau primaire, en français ou en anglais au Canada et qui résident dans une province où la langue dans laquelle ils ont reçu cette instruction est celle de la minorité francophone ou anglophone de la province, ont, dans l'un ou l'autre cas, le droit d'y faire instruire leurs enfants, aux niveaux primaire et secondaire, dans cette langue.

Continuité d'emploi de la langue d'instruction

(2) Les citoyens canadiens dont un enfant a reçu ou reçoit son instruction, au niveau primaire ou secondaire, en français ou en anglais au Canada ont le droit de faire instruire tous leurs enfants, aux niveaux primaire et secondaire, dans la langue de cette instruction.

Justification par le nombre

(3) Le droit reconnu aux citoyens canadiens par les paragraphes (1) et (2) de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité francophone ou anglophone d'une province :

a) s'exerce partout dans la province où le nombre des enfants des citoyens qui ont ce droit est suffisant pour justifier à leur endroit la prestation, sur les fonds publics, de l'instruction dans la langue de la minorité;

b) comprend, lorsque le nombre de ces enfants le justifie, le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique financés sur les fonds publics.