

S E C R E T

November 10, 1981

MEMORANDUM FOR THE MINISTER

RE: Propositions for Quebec

You have asked for my views on the acceptability from the Federal point of view of Mr. Ryan's proposals. I have examined them carefully and am of the view that the following are acceptable.

Financial Compensation

Mr. Ryan has proposed a) a constitutional guarantee of fiscal compensation for provinces opting out of constitutional amendments dealing with education and other matters relating to culture; b) immediate negotiations with respect to other matters to ensure that provinces will not be subject to injustices as a result of opting out; c) if there is no agreement during such negotiations, a constitutional obligation for the Prime Minister to include on the agenda of the first constitutional conference after an amendment is approved the issue of compensation for any province which has opted out.

Proposals a and c are acceptable. I would recommend that b be accepted in a different manner. Rather than holding immediate negotiations, the issue could be inscribed on the agenda of the constitutional conference which will take place in the year following patriation.

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Minority Language Education

Mr. Ryan proposes that the Canada clause be adopted and that the mother tongue test for Quebec be subject to opting-in, opting-out or non obstante.

It is clear that Mr. Ryan's proposal with respect to the Canada clause is acceptable. His position with respect to the mother tongue test should also be acceptable. The purpose of the mother tongue test is to allow francophones outside of Quebec who, because of a lack of facilities, were not educated in French to send their children to school in French. The same problem does not exist in Quebec. However, the linguistic tests of Bill 22 are now rightly or wrongly a symbol of conflict in Quebec. To allow a non obstante clause renewable every five years would be a major symbolic concession and would be seen as an important gesture. It would be a recognition of the possibility of different treatment for Quebec because of its linguistic specificity.

Some of Mr. Ryan's proposals are
not acceptable

Mobility

Mr. Ryan recognizes the importance of mobility rights as fundamental in a federal country but expresses concerns about potential dangers to the linguistic balance in Quebec. He proposes a change to the clause to permit measures to be taken for renewable five year periods to counter substantial dangers to the linguistic balance.

It is offensive to the principle of a single citizenship to contemplate constitutional barriers to the right to move freely anywhere in the country for any reason including linguistic or ethnic origin. This is so fundamental to our notion of Canada that no exception can be made.

In practical terms, Quebec has become more and more French since 1867 and the French nature of Quebec has probably never been stronger than it is today. At the same time, New Brunswick is becoming more French. Any measure in the terms proposed by Mr. Ryan are more likely to be used to the detriment of francophones in New Brunswick than to the detriment of anglophones in Quebec.

Quebec will not be prevented by the Charter from protecting its distinctive French character. Bill 101 can continue to regulate the language of work and the language of the professions. It will remain within the right of the province to require a full knowledge of French as a criterion for graduation from high school and university. Nothing in the Charter will take away the instruments required to keep Quebec French.

Language of Education

Mr. Ryan would subject to a non obstante provision the part of Section 23(2) which protects the right of a Canadian citizen to continue to send his children to school anywhere in Canada in English or French if one of his children has attended school in that language anywhere in Canada. In effect, we are dealing with a mobility clause.

I have examined various options to meet Mr. Ryan's concerns. However, I have come to the conclusion that there is no option which overcomes the objection that some Canadians would have fewer rights than others when they move to different parts of the country. If the Canada clause is not subjected to a non obstante provision in the case of a mass influx from other provinces to Quebec, then there is no rationale for restricting the mobility provision in the case of Canadian citizens with children in school in Canada even if the citizen did not receive his education in English in Canada. In practical terms, Quebec will retain the ability to require that no one can graduate from high school without a complete knowledge of French. I would therefore reject Mr. Ryan's proposal on Section 23(2).

Conclusion

All of Mr. Ryan's proposals on fiscal compensation are acceptable as are two of his three proposals on language of education. His proposals on mobility are not workable because there is no drafting that would solve the problem of creating barriers to mobility which are contrary to the concept of a single Canadian citizenship.

Roger Tassé