



BRIEF
on Constitutional Reform

submitted by
the **CANADIAN POLISH CONGRESS INC.**
HEAD EXECUTIVE BOARD.

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BRIEF ON CONSTITUTIONAL REFORM

In view of the importance of the present discussions on constitutional reform, we the representatives of the Polish Canadian community would like to make our own contribution to the debate by expressing matters of particular concern to our own community.

It seems to us of utmost importance that the constitution give clear expression to the principles of Canadian unity and equality under the law to all citizens. The constitution is the fundamental expression of the premises upon which the state is based. If it is allowed to include regional or ethnic distinctions, historical 'rights' special status, or any other similar privileges, then neither the principle of unity nor that of equality will be safeguarded and Canada will be revealed as an amorphous collection of competing interest groups who refuse to place the minimum interest of the whole above their personal gain. We firmly support the principle of equal status for every Canadian regardless of origin, race, religion, sex or so-called 'historical status'. Any privileges granted to one province or to one group of individuals, should apply equally to all provinces and all groups: special privileges bestowed on any sector implicitly confer inferior status on the remaining sectors of society.

At the same time, the constitution should clearly state in its preamble that Canada is a country which has been created out of ethnic, cultural and linguistic diversity. It should affirm the right of every group, not merely people of French or British origin, to preserve and cultivate their various languages and cultures within the broader Canadian context. The Canadian constitution is intended as a document which will withstand the test of time - certainly the difficulties of the last several decades in repatriating the constitution suggest that this is not a process which the nation should wish to undergo very often. If continuing immigration, particularly from the non-French or non-English speaking parts of the world, decisively changes the ethnic composition of this country (as indeed it has already been doing since the last world war), then a document which singles out the so-called 'founding races' for special mention and special privilege simple because of historical accident will become increasingly objectionable and irrelevant, not to say racist.

The specific recommendations of the Task Force on Canadian Unity (number 28) suggested that the preamble to the constitution 'recognize the historical partnership between English and French-speaking Canadians, and the distinctiveness of Quebec'. Inasmuch as this would ignore the various other partnerships which bind together this country, singling out only one in particular, this could be taken as an insult to Canada's smaller ethnic groups whose partnership in this country is of legally equivalent validity. Furthermore, why should the obvious distinctiveness of Quebec alone merit recognition in the preamble to the constitution? Why not the Gaelic distinctiveness of Nova Scotia, or the Ukrainian distinctiveness of Manitoba? Either all distinct regions (down to Toronto's "little Italy") are singled out, or none are, if the principle of equality is to be preserved. Since such a lengthy listing of regions would tend to undermine the principle of Canadian unity, we suggest the matter not be specified in this way.

The same recommendation of the Task Force suggests that the constitution recognize the 'special place' of the so-called 'native peoples' of Canada. A constitution should not compromise itself by imprecise use of language: any Canadian citizen born in this country is a native, regardless of how many decades or tens of thousands of years ago his forefathers immigrated to this country. It hardly conforms to any normal principal of justice to make status in a country dependent on the historical order in which ethnic groups immigrated into this country.

Finally, the Task Force recommends that the preamble "recognize the richness of the contribution of Canada's other cultural groups". This formulation can only be seen as patronizing towards the one third of Canadian society which according to this formulation is to be denied the 'historical role' of the English and French, or the 'special status' of the Inuit and Amerindians. We not only make a 'contribution' to this country, we are an integral part of this country, with as much legal right as the previously mentioned groups - we should not be insulted by suggesting that we only 'contribute' to a process controlled by another group. A constitution which denies logic and simple justice will only exacerbate differences in this country and ultimately impede the quest for national unity.

The question of language is one of the most difficult which the constitutional discussions will attempt to resolve. We propose that the constitution incorporate the principle of the equality of all languages, official or otherwise. Since every Canadian citizen speaks either French or English, these languages together constitute official languages for practical purposes. We would point out, however, that bilingualism must be applied equally to all provinces - if government services in two languages are deemed to be desirable, then these services should be provided everywhere - there can be no province which opts out of this constitutional obligation, whether that province be Quebec or Alberta. Similarly, no province can be assigned a special mandate to preserve a particular culture - all cultural roots deserve to be preserved in each and every province. A provincial government, like the federal government, represents all of its constituents, not just the majority. For a majority culture, whether Anglophone or Francophone, to impose its culture on other ethnic groups simply because they constitute a minority is a complete disregard of democratic principles. Whether this assimilation is fostered by benign neglect or by aggressive chauvinism is immaterial, it constitutes precisely the same perversion of democracy as if ninety percent of a population voted to commit genocide on the remaining ten percent. Democracy is obviously more than simple majority rule. If the constitution is to be at all meaningful, then it must guard against such miscarriages of justice.

If one wishes to preserve a particular culture, this must come through the sustained efforts of the members of the cultural group in question, and not through an expensive and artificial support of the culture through persistent government interference. In any case, it surely does not accord with the principle of equality for a government to select a particular culture for promotion and then support it with funds collected in part from other cultural groups. If Canada's governments wish to write cultural preservation into the constitution, then in order to accord with the principle of equality, they should also include a revenue sharing formula which will distribute money to each group on a proportional basis, decided by the number of taxpaying members in each group. If this seems too cumbersome, or fraught with political dangers, then we suggest that cultural preservation not appear in constitution, and the matter be left up to the energy and interest of individual Canadians.

The question of third languages also needs to be reviewed. The government of Canada says that it accepts the multicultural nature of this country, and yet it ignores the issue of language without which culture per se is meaningless. If the question of language is so vital to a group as large as the Quebecois, how much more crucial must it be to the smaller and widely dispersed ethnic communities who stand to lose any trace of their cultural heritage once their language disappears. Existing multicultural policies have fostered a stereotypical view of ethnic culture as consisting of costumes, dances and exotic foods, but by ignoring language, they have cut these cultures off from their roots, rendering them into irrelevant archaic museum pieces and not living organisms. If the government sincerely believes in multiculturalism, then it must maximize opportunities for third language education within the normal educational curriculum. Anything short of this is simply dishonest. While we all accept the practical rationale for official bilingualism, we reject utterly the notion that Canada is a bilingual country in the everyday practices of a substantial proportion of its population. At present, education is a provincial responsibility, but in any new constitution, the provinces should be reminded of their educational responsibilities to all of their citizens who wish to preserve third languages.

There has been much discussion of reforms to the House of Commons, the Senate and the Supreme Court. We would suggest that again the principle of equality inform any such changes. In reforming the Senate, the principle of accountability through election must be included. Senators should not be appointed for indefinite terms of office, they should be given real and not merely symbolic powers, and regional balance within the Senate should be enhanced by assigning a specified number of senators from each province.

As regards reform of the House of Commons, the fundamental problem to be addressed here is that parties in a 'permanent minority' in certain parts of the country (for example the Conservatives in Quebec, or the Liberals in Alberta) are never able to send representatives to the House, despite the fact that they regularly obtain as much as a quarter of the votes in the particular area named. Any reform of this inequality must not move in the direction of appointing additional members to the house; such appointed representatives would have as their first allegiance the party which appointed them, and not the people who in such a case would have had no voice in their selection. Such an appointment without responsibility to the people through election is completely unacceptable in a democratic state.

One way around this difficulty might be to reduce the number of federal ridings by increasing their size so that each new riding would in fact send several members to Parliament. Competing parties would present a slate of candidates in each riding, while the voters would have to choose as many as the riding sends to the Parliament, though choices could cross party lines. Election results would be decided by calculating the number of votes each party received in the riding and giving it a proportionate number of the ridings representation in Parliament. Selection of representatives from each party's slate would be in accordance with the number of votes each received. Such a system, though more cumbersome than the one presently in use, might at least offer a more balanced regional representation in the House of Commons, with permanent minority parties having at least the possibility of a few representatives from regions in which their votes are split. It would also ensure that the final decision of who goes to Parliament would remain with the voters and would not be vitiated by arbitrary party appointments.

Any reform of the Supreme Court of Canada must similarly incorporate the principle of equality and representation by population. In the recommendations of the Task Force on Canadian Unity, it was proposed that six common law and five civil law judges be appointed in a reformed court. This would effectively mean that regardless of its population or political circumstances, Quebec would perpetually hold almost half the seats in the court with the office of chief justice held by a Quebecois for half the time. This is clearly inequitable and we reject such a formula on principle. It may be preferable to increase the number of seats in the Supreme Court, half of them to be awarded on a regional basis (one each from British Columbia, the Prairies, Ontario, Quebec, and the Maritimes) and the other half to reflect population shifts in the country. Such a formula could be left deliberately vague to allow the government some discretion in its appointments, but whatever formula is ultimately adopted must not give disproportionate influence to one section of the country.

We close this brief with our general view that despite regional assertiveness, the new constitution must strive to preserve the essential unity and integrity of Canada. This can ultimately be done only by giving the central government adequate powers in this direction. While excessive centralization runs the risk of creating a distant impersonal administration oblivious of regional realities, excessive decentralization will fatally weaken this country's capacity for unified planning and action. Thus we feel that it is essential for aspiring provincial political leaders to manifest the wisdom not to challenge fundamentally federal powers such as those dealing with foreign affairs, defence, monetary policy, tariffs, national economic policy, Canada-wide standards, inter-provincial communications, and national security. Furthermore, an equitable arrangement must be negotiated dealing with resources by which each province can benefit from its own resources, but not to the detriment of the rest of the nation. Finally, in a unified nation, any impediments to the free movement of goods or people must be abolished: any provincial legislation which seeks to exclude some particular category of Canadians from job opportunities or seeks to impede the free movement of goods and services across provincial borders must be clearly and categorically declared to be unconstitutional. The alternative is not merely the balkanization of Canada, but its reduction to a collection of competing regions paralyzed by their mutual hostility. If the vision of a strong and unified Canadian nation is ever to be realized, it cannot be done by crudely protectionistic measures which enlightened opinion in the rest of the world is seeking to abolish.

We realize that many of the recommendations made in this brief are based rather strictly on principle rather than on criteria of expedient satisfaction of as many vociferous interests as possible. We feel however, that any constitution not based on principle will not last for very long, and indeed might be a source of future discord. The tragic example of the post-war Lebanese constitution, which attempted to fix a series of special rights and privileges for special status groups and which has now degenerated into permanent civil war, should be a warning to those who wish to enshrine special privileges in a document which must stand above time and place. Such a vision may not be politically expedient, but in such a serious matter, it is time for all of Canada's leaders to set aside expediency and self-interest, and for Canada's citizens to look beyond narrow regional concerns, to fulfil a broader vision of the nation's promise.

For the Canadian Polish Congress Inc.
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