# BRIEF

# TO THE

# SPECIAL JOINT COMMITTEE OF THE SENATE

# AND OF THE HOUSE OF COMMONS

# ON THE

# CONSTITUTION OF CANADA

# SUBMITTED BY THE

# CANADIAN CONSULTATIVE COUNCIL ON MULTICULTURALISM

Ottawa, Canada December 18, 1980

The Canadian Consultative Council on Multiculturalism is very grateful for the opportunity to participate in one of the most important debates in Canadian history. If we may, we would like to give you a brief description of our Council.

The intention of the Government to create a council on multiculturalism was announced by the Prime Minister on May 26, 1972. He said:

> Our desire is to compose a body of persons well qualified to make recommendations to ensure the full participation of all Canadians in the cultural development of this country. The Council will assess needs, offer advice and contribute to the good relations of Canadians of all cultural backgrounds. It will be part of the consultative process of Government.

Thereafter, in May 1973, the Canadian Consultative Council on Multiculturalism (CCCM) was created. It is composed of 100 members representing almost all of Canada's cultural communities, including Canadians from Inuit, Japanese, English, French...Italian cultural origins.

Not only do most cultural groups involve themselves directly in our deliberations but we also travelled across the country to get first hand impressions from local communities in the many regions of this country.

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When the Policy of Multiculturalism was announced on October 8th, 1971, part of the Federal Government statement said:

> We believe that cultural pluralism is the very essence of Canadian identity. Every ethnic group has the right to preserve and develop its own culture and values within the Canadian context. To say we have two official languages is not to say we have two official cultures, and no particular culture is more 'official' than another. A policy of multiculturalism must be a policy for all Canadians.
>
> The government regards this as a heritage to treasure and believes that Canada would be poorer if we adopted assimilation programs forcing our citizens to forsake and forget the cultures they have brought to us.

All party leaders supported the Prime Minister's statement in the House of Commons. The Honourable Robert L. Stanfield, leader of the Official Opposition told the House of Commons that:

> This declaration by the government of the principle of preserving and enhancing the many cultural traditions which exist within our country will be most welcome... What we want is justice for all Canadians and recognition of the cultural diversity of this country.

Mr. David Lewis, leader of the New Democratic Party, said that:

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> ...it is with deep appreciation of both aspects of our Canadian cultural life, official Bilingualism and Multiculturalism, that my party warmly supports the principles set forth by the Prime Minister.

Mr. Réal Caouette, the leader of the Parti Créditiste, said:

> ...I am absolutely convinced that Canadians in general share the views expressed by the Prime Minister... We want in Canada a truly great country for the people of Canada, for all the ethnic groups in our country.

In reviewing these comments made by all party leaders, we conclude that Parliament defined Canadian society as being a bilingual and multicultural nation. Thus, ladies and gentlemen, it seems only natural and logical to include Canada's multicultural reality in the Resolution before your Committee.

The Council is utterly convinced that all ethnocultural groups recognize the importance and place of the French language in Canada. Multiculturalism respects the linguistic status of English and French as defined in the

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Official Languages Act and in the Resolution. We respect both the historical claims and the present realities on which official bilingualism is based. All ethnocultural communities have a special interest in guarding against the drowning of cultures in the Anglo-American sea. They see the continued viability of the French language as one of the cornerstones of cultural pluralism.

In short, the Policy of Multiculturalism does not challenge the status of Canada's official languages but complements it. By promoting a climate of cross-cultural sympathy and linguistic opportunity, multiculturalism works to establish the prerequisite for Canadian unity in a bilingual and multicultural framework.

When Parliament agreed to support the Multicultural Policy in 1971, the ethnocultural groups were pleased that their existence was officially recognized. Since this Policy was unanimously supported by all parties, Multiculturalism is therefore a national policy involving all Canadians. As a national policy and an integral part of the Canadian reality, Multiculturalism surely must be included in the Canadian Constitution - the fundamental national framework for all Canadians, present and future.

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The Council recommends that a preamble be added to the Resolution and in that preamble a recognition of Canada's multicultural society be clearly stated. What we are suggesting is not new or untoward for in the Final Report of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, co-chaired by Senator Gildas L. Molgat and Mark MacGuigan, M.P., (Fourth Session, 28th Parliament, 1972) the following recommendation was made in Chapter 10, dealing with Language Rights:

> Recommendation No. 27.
>
> The preamble to the Constitution should formally recognize that Canada is a multicultural country.

More recently in the Senate Debates, Appendix A, The Constitution, Second Report of the Special Joint Committee, October 4, 1978, the Report stated in the section dealing with "The Preamble and the Aims of the Federation" (p. 1052) that...

> Further, although we recognize that the concept of multiculturalism is implicitly covered by the phrase 'equal respect for the many origins, creeds and cultures... that help shape Canada' we urge that the word, 'multi-culturalism' should also be included.

The CCCM fully supports these recommendations and agrees that multiculturalism requires formal emphasis and

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must be included in the preamble to the Constitution.

The CCCM has searched for the best preamble to reflect Canadian society and we could not find a better alternative than the one which would incorporate the objectives set out in Chapter Six of the Special Joint Committee of the Senate and House of Commons, referred to earlier:

1. To establish a federal system of government within a democratic society;

2. To protect and enhance basic human rights;

3. To develop Canada as a bilingual and multicultural country in which all its citizens, male and female, young and old, native peoples and métis, and all groups from every ethnic origin feel equally at home;

4. To promote economic, social and cultural equality for all Canadians as individuals and to reduce regional economic disparities;

5. To present Canada as a pluralistic mosaic, a free and open society which challenges the talents of her people;

6. To seek world peace and security, and international social progress.

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With respect to the Charter of Rights, the Council supports the general intent as expressed in the Resolution. The basic purpose of a Charter of Rights must be to protect individuals and minority groups. Section 1 of the Charter makes it possible to deny fundamental freedoms to individuals or groups when the words, "subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government", are used.

We join with others who have appeared before you in strongly recommending that the clause in the section which allows legislatures to override the rights of individuals or groups be eliminated from the Charter.

In our judgment, a Charter of Rights must put some fundamental freedoms beyond the power of a legislature to effect. As Section 1 now stands, rights can be taken away when you need them most - in times of temper and uncertainty.

We recommend, in the same thrust of the broad objectives we supported earlier, the following wording for Section 1:

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1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it, subject only to such limits as are proscribed by law and are reasonably justifiable and humane in a pluralistic and democratic society.

In dealing with Fundamental Freedoms, (Section 2), the Council is concerned that organizations such as the Ku Klux Klan are again "burning crosses" in Canada. We believe that the intended meaning of "freedom of opinion and expression" should not allow individuals or groups to infringe on the rights and freedoms of others. No group should be allowed to propagate hate-messages at the expense of any other group.

The Council recommends that Section 2(b) be strengthened in line with Article 19 of the International Bill of Human Rights to read:

2(b) Freedom of thought, belief, opinion and expression, including freedom of the press and other media of information, subject to the rights or reputation of others:

The CCCM strongly welcomes the inclusion of Section 15 in the proposed Charter. We applaud the inclusion of this section which prohibits discrimination because of race, national or ethnic origin, colour,

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religion, age or sex. We would, however, suggest the removal of the word "disadvantaged" from Section 15(2).

Our concern is that having "disadvantaged" included in Section 15(2) may allow courts to rule against beneficial affirmative action programs. We would then recommend that the sub-section be re-worded to read as follows:

> This section does not preclude any legislative distinction which is justifiably related to some bona fide amelioration of the conditions of certain specified classes of persons.

In this way, the latitude of the courts to determine what constitutes "disadvantaged" is proscribed, however, allowing for what we consider to be important programs to help certain classes of persons in Canada.

The CCCM wishes to again inform this Joint Committee that it supports the Official Languages of Canada section in the proposed Charter. We would wish, however, to amend Section 22, as follows:

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> 22. Nothing in Sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language <u>that is essential to the preservation and development of the multicultural reality of Canada</u>.

Our aim in this recommendation is not to allow the prevention of valuable programs by governmental institutions that may deem them to be outside of their jurisdiction. As an example, we would note the present broadcasting by CBC in the North in Inutituk and other Native languages. We would wish that such programs continue because, as well as providing basic information, they promote the preservation of the Inuit and other Native cultures.

In dealing with Section 23 - Minority Language Educational Rights, we wish to draw the attention of the Parliamentary Committee to the inherent dangers in the present wording. As this Section reads, it creates different classes of citizens and is therefore discriminatory.

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It creates two classes of Canadian citizens, depending on their mother tongue, and two classes of immigrants, depending on the countries from which they came. We find a Charter which includes such discriminating features difficult to accept. At the same time we find it difficult as well, to formulate Section 23 to remove the difficulties we have mentioned while trying to encourage the very legitimate demands that Section 23 is attempting to realize; consequently we would articulate some principles which we believe Section 23 must contain:

The First - All Canadians must be allowed the opportunity to acquire proficiency in one of Canada's Official Languages;

The Second - All Canadians should be allowed the opportunity to acquire a capacity in the other Official Language;

The Third - The wishes of provincial legislatures in legislating in the area of language must be respected;

The Fourth - All Canadians should be allowed the opportunity to acquire a capacity in languages other than the official language if they so desire;

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We articulate the second principle since we believe that the promotion of both Official Languages is beneficient to the individual and to a united Canada.

We articulate the third principle because of the relationship of language and culture. Although this relationship is not absolute, there is a necessary relationship between language and culture. This being the case, for cultures to be preserved and developed, there is a need for language acquisition. We also think that the learning of languages by Canadians would give this country a substantial resource to be treasured and valued for international trade and diplomacy.

The Council is particularly concerned with the interpretation and intent of Section 24 under Undeclared Rights and Freedoms, concerning the Native People of Canada. The Canadian Indian, Non-Status, Inuit and Métis people, currently referred to as the Native People of Canada in this Constitutional Document, historically have been among the most disadvantaged people in our country. In addition to their social and economic plight, they are confronted with

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the threats to their cultural heritage and identity through processes such as urbanization and mass media. Our Council urges the Special Joint Committee to be receptive to the recommendations of the Native groups. The representatives of the Native groups can speak more directly and immediately about their social and economic problems. However, the Council joins with them in sharing their anxiety about the threat that today's society presents to their cultural heritage.

Culture is a dynamic aspect of our lives. It affects our perception of ourselves and of others. By creating greater appreciation of cultural values, multiculturalism serves as a strong and unifying force in this country. Multiculturalism is not merely a term synonymous with cultural pluralism or diversity, it is the joining together of all traditions which collectively express the reality called "Canada", joining together while still maintaining individuality and distinctiveness.