

November 24, 1980

Joint Clerks,
Special Joint Committee on the Constitution of Canada,
Postal Box 1044,
South Block,
Parliament Buildings,
Ottawa, Ontario
K1A 0A7

RE: The proposed resolution, the state policy of multiculturalism
and the collective status of ethnics and immigrants who
are neither Anglo-Celts nor French

While the membership of our association includes individuals representing 32 ethnocultural groups, its overwhelming majority consists of 'ethnics' and immigrants who are neither Anglo-Celts nor French. This majority is of the opinion that the status quo deprives them of equality of political opportunity as well as of full benefits of citizenship in matters of civic self-esteem, vital decision-making, representation, participation, economic advantage and patronage. As a result, we believe that a consistent, chronic pattern of gross violations of fundamental political collective and individual rights is keeping almost a third of Canada's population in a most anachronistic and unenviable condition.

Nevertheless, despite Canada's growing concern with violations of human rights abroad and despite all the domestic demagogic rhetoric, the collective status of these Canadian minorities would remain under the proposed resolution

essentially unchanged.

We, therefore, wish the new constitution to put an end to this exclusionary injustice in general and to ensure in every particular that these politically and ethnoculturally disadvantaged Canadians become equal to citizens of Anglo-Celtic and French origin.

Without any intention of writing a comprehensive disquisition on the subject of the drafting of constitutions, we wish to remind you that Canada could, at least ex hypothesi, have the best, the most modern and the most democratic constitution in the world. We, furthermore, suggest that Canada needs such a constitution.

Accordingly, we believe that Canada ought to have an entirely new constitution as it is technically not feasible to resuscitate such an anachronistic and anomalous colonial charter. As the absolute majority of Canadians are not of Anglo-Celtic origin perhaps alternative forms of more viable government should be considered. Above all, the constitution should provide a sense of all Canadian purpose!

The proposed resolution however gives the impression of being a cosmetically and 'seasonally adjusted' second hand constitution, revealed by instalments. What purpose is served by putting new wines into old broken bottles? Why revise the constitution in a mono-partisan mood and in a whimsically arbitrary manner? Do we not want to do well or better than usual?

The Association would prefer a constitution drafted by a specially elected constitutional convention. Such a constitution could be approved both by the Parliament and the people by means of a constitutional referendum. In this manner the ancient British parliamentary principle of "what touches all should be approved by all" and the modern French principle of popular sovereignty could be simultaneously reasserted. At the same time, the promises of 'particip-

atory democracy' and of a politically and ethnoculturally 'just society' could be at least finally constitutionally honoured, and hopefully, ultimately put into practice!

Our membership includes Canadians from all the five continents and many among them are both aware of the destructive power of inter-ethnic conflicts in their native lands just as they are familiar with the disastrous social cost of the Canadian practice of ethnocultural pluralism on the basis of inequality. We, therefore, fear that the proposed resolution is placing a time bomb into Canada's future.

If the proposed resolution is passed, its constitutional architects will not be remembered by Canadian multicultural minority groups as those who "buildeth better than they knew" but as those who "buildeth worse than they could have".

After these general preliminary remarks we wish to address ourselves to issues relating to the state policy of multiculturalism and the extension and protection of individual and collective rights.

We realize that, as the people at large and underrepresented in Parliament, we cannot as yet prevent a majority Government from doing what it wants to do. Under the circumstances, the Association approves both of the initiative to 'patriate', or rather Canadianize, the Constitution and of the entrenchment of a Canadian Charter of Rights and Freedoms.

However, we are more than disappointed with what was advertized as 'the people's package'. It reminds us, as far as multiculturalism is concerned, of a totally empty basket!

With respect to the proposed Charter of Rights and Freedoms, we fail to understand why the Government has not chosen to make a considerably better Charter easily and universally acceptable by simply stating that such an entrenchment was imperative in order to live up to Canada's international obligations

assumed jointly by the federal and provincial governments.

Exclusive federal jurisdiction in this matter is clearly uncontested. Neither the provinces, (let alone the people of Canada), nor the British Parliament could oppose such constitutional recognition and confirmation of already assumed obligations as pacta sunt servanda.

Accordingly, a most comprehensive Canadian Charter of Rights and Freedoms could be entrenched by a single paragraph stating that "the Universal Declaration of Human Rights and the provisions of the UN Covenants of which Canada is a signatory are valid and binding portions of the Constitution of Canada. Any law that is inconsistent with them is, to the extent of such inconsistency, inoperative and of no force or effect."

Under this umbrella, subsequent, unhurried legislative elaboration could provide the necessary specific provisions for promotion, extension and defense of individual and collective human, social, economic, cultural, linguistic, educational and political rights and freedoms of Canadians.

The association believes that the new constitution ought to be a new political and ethnocultural social contract within a multicultural Canada. Instead of holding the Canadians who are not of Anglo-Celtic and French origin in permanent political and ethnocultural contempt, the constitution ought to provide for adequate consensus making machinery ensuring political and ethnocultural equality.

The constitution must reflect the multicultural character of the country and do so in its preamble. The constitution should ensure that the Government has the powers it requires to pursue and implement the policy of multiculturalism in all of its aspects: cultural, economic, educational, linguistic and political. As the political elite of Canada both consists of and responds solely to input

from the two dominant cultural groups, it is essential that the new charter is not made without consultation with elected representatives of subordinate cultures. It is, therefore, imperative that multicultural citizenry not be forced into a bicultural Procrustes' Bed. Inalienable collective rights of all cultural groups, aboriginal and transplanted should be entrenched. The principle of 'equalization' ought to apply also not only to regional economic disparities but to ethnocultural disparities and receive constitutional recognition. 'Mobility' rights ought to include, in addition to horizontal mobility rights, also the 'vertical mobility' rights which would enable the members of the subordinate cultural groups to reach the apex reserved for Canada's state elite. Therefore, right to access to power-sharing with the Anglo-Celts and the French ought to be entrenched. The composition of the Cabinet, the House of Commons, the Senate, the Courts and all the public institutions should be based on the mandatory tripartite multicultural representation (the French, the Anglo-Celts and 'other' Canadians). For instance, the office of the Governor General ought to be filled, in rotational, institutionalized tripartite sequence, by members of the two dominant and the subordinate cultural groups.

One of the few countries in the world without a federal system of education, multicultural Canada would greatly benefit from a multicultural system of education. It could eventually erase or blunt the reciprocally unflattering collective images dividing the cultural groups and positively reshape the outlook and multicultural coexistence of future generations of Canadians. The constitution could also alter the motto of Canada to read: Diverse but united, from sea to sea.

A random commentary and a few proposals on selected issues follow:

Re: Part I,1. We request that the following wording be deleted:

"Subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government". Retaining such nebulous wording would be tantamount to freezing the Canadians who are neither French nor Anglo-Celts into a permanent underclass of citizens.

Part I,3. We propose that the right to stand in an election be added.

We also propose that all political parties be compelled to reflect in their slates of candidates the multicultural composition of Canada's population.

Part I,6. (1) Canadians who are neither French nor Anglo-Celts also have the right of collective vertical political mobility, i.e. the right to be proportionally or adequately represented in all public decision-making bodies of Canada.

Part I,15. (2) Many human rights remain a nudum jus and dead letters on the statute books as they de facto cannot be exercised. Therefore, we propose that special federal tribunals for the protection of human rights and suppression of discrimination be established. Judges to be appointed to such tribunals must be recommended by the Chief Commissioner, Canadian Human Right Commission, for reasons which exclude political patronage and ethnocultural nepotism. In addition, special federal ombudsmen and special federal prosecutors to facilitate and enforce the exercise of these rights to non-discrimination ought to be appointed. Plaintiffs attempting to redress their grievances in these tribunals shall have the right to class action suits.

Part I,23. We are dismayed with consistent avoidance of recognition of any collective minority educational rights other than Anglo-Celtic and French. We propose, therefore, that the following wording be added:

"Citizens of Canada and landed immigrants whose first language learned and still understood is neither French nor English shall have the right to have their children receive their primary and secondary school instruction in both official languages in separate bilingual schools whenever and wherever the numbers warrant such facilities.

Re: Part II, 31, (1) We propose that the following be added:

- (d) furthering reduction in ethnocultural disparities in opportunities,
- (e) providing proportional political representation to all the three ethnocultural groups of Canadians: the French, the Anglo-Celts and 'other' Canadians,
- (f) promoting equal opportunities for commensurate power-sharing by all ethnocultural groups.

We also note, with dismay, that some of the much needed democratic and political rights are neither listed nor considered. For example, to mention but a few:

- right of recall of members of Parliament for flagrant breeches of electoral promises,

- the constitutional procedures for potential impeachment of the Prime Minister and members of the Cabinet,

- the constitutional procedures for the appointment of Governor General,

- right to initiate referenda,

- right of popular legislative initiative,

- right of guaranteed seats for the representatives of ethnocultural minorities, etc.

At this point, the Association prefers not to go into further details as it fervently hopes that it will have the opportunity to appear before the Joint Committee and provide orally all the necessary explanations for its stand.

THE MULTICULTURAL ASSOCIATION OF FREDERICTON

(A copy of the text of our first brief to the Special Joint Committee on the Canadian Constitution, submitted in 1978, is attached.)