



SUBMISSION

TO

THE JOINT COMMITTEE

OF

THE SENATE AND THE HOUSE OF COMMONS

ON

THE PROPOSED CONSTITUTION ACT, 1980

SUBMITTED BY

THE QUEBEC FEDERATION OF HOME AND SCHOOL ASSOCIATIONS

4795 St. Catherine Street West, Montreal, Quebec

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INTRODUCTION

The Quebec Federation of Home and School Associations (QFHSA) is pleased to have the opportunity to make this submission to the Joint Committee of the Senate and House of Commons concerning the proposed Constitution Act, 1980.

The Organization

The membership of QFHSA is composed of 9,000 families and comprises ninety local Home & School Associations throughout the province of Quebec. Associations exist wherever schools of the Protestant panel exist, from the Gaspé peninsula to Aylmer in Western Quebec, from Magog in the Eastern Townships to Baie Comeau on the North Shore. As such, our Federation is not so much a separate entity as it is the sum total of its local associations and individual members. It is the largest voluntary and independent parental educational organization in Quebec. It is a constituent member of the Canadian Home and School and Parent-Teacher Federation which this coming year will celebrate its fifty-fifth anniversary.

The Aims of the Organization

QFHSA was incorporated on August 27th, 1959, by Letters Patent issued under the Quebec Companies Act. Amongst its objects and purposes are the following:-

- * To assist in the formation of public opinion favourable to reform and advancement of the education of the child.

- * To develop between educators and the general public such united effort as shall secure for every child the highest advantage in physical, mental, moral and spiritual education.

- * To raise the standard of home and national life, and
- * To promote and secure adequate legislation for the care and protection of children and youth.

Approval of the Brief

The Board of Directors of QFHSA, at its meeting of November 15th, 1980, approved as the basis for our Submission the following:-

- (a) The rights of children to the services they need to support personal and academic growth, and to services which recognize their linguistic and cultural differences.
- (b) The right of parents to define their child's linguistic and cultural identity in the field of education and public services.
- (c) Schools which reflect the linguistic, cultural and religious values of the communities they serve.
- (d) Support for local democracy in education and other public services as an expression of rights.

The fifty members of the Board of Directors come from each geographical region of the Province, appointed by the schools of each region, to conduct such business as is delegated to the Board of Directors by the Annual General Meeting. This Submission was approved by the Executive Committee of QFHSA at its meeting of December 15th, 1980.

PRELIMINARY REMARKS

Majority/Minority Educational Systems

Before Confederation, parents in the then Province of Canada whether citizens or aliens were recognized as having the right to declare their child's interest in terms of religious faith, and as a Catholic or Protestant minority (dependent upon status in the district) organize the schools and school system which would aid them in their task of educating their children. This right of dissent from the local majority to preserve a freedom of conscience in relation to religion is a treasured heritage that is as appropriate in today's environment of individualism as it was at the time of Confederation.

But the principle of dissent, while valid, has to be extended to recognize present day pressing concerns. In the current revision of the Constitution the principle of dissent should be extended to include full freedom to dissent from the provincial majority linguistic group in education. As a corollary to such extension, the democratic practice of parental control of the educational ambience through locally elected school boards should be sustained and extended through legislation which recognizes, as did the religious dissent legislation, that minority language educational rights entail more than classroom instruction. They also require minority language school boards with appropriate rights and responsibilities and with constitutionally protected access to public funding. Guaranteed majority/minority educational systems would make sense in a Constitution which recognizes and protects the educational rights of two official language groups in a Canadian Charter of Rights and Freedoms.

The Child and the Parent

We take as our central focus the reference to children in the Canadian Charter of Rights and Freedoms. We find it extraordinary that the rights of the child are only operative indirectly, when, in the section on 'minority language education', parents are citizens and come within the definition of the provincial official language minority group. In our view the approach should be more direct and the scope broader. The reality is that schools are the institution accessible to children in every community in Canada. In our opinion one cannot dissociate schooling from children's rights in Canada. The approach we would prefer for a charter of rights and freedoms, therefore, would be one that first sets out the basic premises for the Canadian democratic system. Once that is agreed, the principles to be observed by governments, organizations and individuals can be confidently defined and compatible policies developed and implemented. In that context Canadians will find, as have most Western democracies, that the question of the language of elementary and secondary education is better settled by those best qualified to act as advocates of the individual child, namely, the parents.

HISTORICAL PERSPECTIVE FOR RIGHTS

Putting in place mechanisms that accommodated religious and linguistic differences was what Confederation was about according to an informed and formidable early French-Canadian nationalist, Henri Bourassa. In 1916, for instance, he wrote:-

"In the minds of the Fathers of Confederation, the federal pact and the constitution which defines the terms of its approval were to end racial and religious conflict and to assure all, Catholics and Protestants, French and English, complete equality of rights throughout the whole of the Canadian Confederation. The Manitoba Act, passed the Imperial Parliament in 1870, and the Northwest Territories Act, passed by the Ottawa government in 1875, bear the fleeting imprint of the same intelligent and generous thought. Those were our last victories."

(Quoted by Ramsay Cook, in Provincial Autonomy, Minority Rights and the Compact Theory, 1867-1929. Queen's Printer for Canada, 1969, p.57)

When Bourassa wrote that, of course, it was fifty years after Confederation -- mid-way between our times and Confederation. But it is important to note he thought of Confederation as a charter of rights and freedoms in regard to language and religion. He thought of it as a dual compact -- a dual contract. One was a cultural contract between the French and English in the old Province of Canada. The other contract was intended to consolidate the scattered colonies of British North America.

All Bourassa's contemporaries were not equally persuaded that the social mechanism reflecting the cultural compact was well balanced. Professor Ramsay Cook in discussing this matter cites the opinion of a major French-Canadian historian, Abbé Lionel Groulx:-

"Groulx's chief criticism of Confederation, which in 1918 he thought was breaking up because of western discontent, was that it has failed to provide adequate protection for the minorities. The English Protestant minority in Quebec has received full security, but the French and Roman Catholic minorities had not received equal guarantees. He wrote: 'We must never tire of saying that this and only this is the basic fault of our constitution and the greatest mistake made by Lower Canada's statesmen'."

Henri Bourassa and Abbé Lionel Groulx were both assessing Confederation in relation to an abstract concept of cultural compact. It is possible, however, that those involved in implementing Confederation were not concerned with abstract declarations but rather with finding pragmatic solutions to the linguistic, cultural and religious pluralism with which they were confronted. The then Hon. Attorney General, George-Etienne Cartier, described the duality problem in Quebec and in Canada (a dual/duality):-

"It was also necessary to protect the English minorities in Lower Canada with respect to the use of their language, because in the Local Parliament of Lower Canada the majority will be composed of French Canadians. The members of the Conference were desirous that it should not be in the power of that majority to decree the abolition of the use of the English language in the Local Legislature of Lower Canada, any more than it will be in the power of the Federal Legislature to do so with respect to the French language. I will also add that the use of both languages will be secured in the Imperial Act to be based on these resolutions."

(Confederation Debates, 1865, p.945)

He also described on another occasion the equilibrating process by which the dual/duality would be kept in balance within the federal system:-

"We could not do away with the distinctions of race. We could not legislate for the disappearance of the French Canadians from American soil, but British and French Canadians alike could appreciate and understand their position relative to each other.... It was a benefit rather than otherwise that we had a diversity of races. Of course the difficulty, it would be said, would be to deal fairly by the minority. In Upper Canada the Catholics would find themselves in a minority, in Lower Canada the Protestants would be in a minority, while the Lower Provinces were divided. Under such circumstances would any one pretend that either the local or general governments would sanction any injustice? What would be the consequence, even supposing any such thing were attempted by any one of the local governments? It would be censured everywhere. Whether it came from Upper Canada or from Lower Canada, any attempt to deprive the minority of their rights would be at once thwarted."

(K.A. MacKirdy, J.S. Moir, and Y.F. Zoltvany, Changing Perspectives in Canadian History, Dent and Sons, Don Mills, 1971, p.214)

The above concerns caused to be incorporated into Sections 93 and 133 of the B.N.A. Act checks and balances to protect language and schools rights. By Section 91(1) of that Act those rights cannot be altered or varied by the Parliament of Canada or the National Assembly of Quebec. Only the Parliament of the United Kingdom can do that. In effect, these rights are a 'trust' administered by the provincial and federal governments. And it is appropriate that they be so entrusted, since language is the means of identity of a particular culture, and schools the vehicle of the culture's survival.

THE CANADIAN CONSTITUTION, 1980

The proposed resolution respecting the Canadian Constitution, 1980, includes an address to Her Majesty the Queen asking her to lay the Canada Act before the Parliament of the United Kingdom for enactment. The constitutional checks and balances to protect linguistic and school rights which were placed beyond the reach of Canadian legislators by Section 91(1) are therefore at risk. It is our reluctant conclusion that the proposed legislation purporting to improve the prospects for individual minority rights, actually does the converse in Quebec as a result of Articles 23, 34, 43 and 16(2).

Existing Guarantees

Section 93 of the B.N.A. Act guarantees the continuation of minority schools in those provinces where they existed by law at the time of Confederation. As Sir Wilfrid Laurier stated in the debate on the Autonomy Bill in 1905, referring to the intention of Section 93:-

"But I shall be told that this exception applies to Ontario and Quebec alone, and not to the other provinces. Sir, that is true. Amongst the four provinces then united, Ontario and Quebec alone had a system of separate schools."

(Cited in Ramsay Cook, op. cit., p.58)

Thus the minority school guarantees of Section 93 affect directly two provinces, and, indeed, they affect them differently.

At a later stage in the debate on the Autonomy Bill referred to above, Laurier pointed out that the constitution contained specific guarantees of religious rights but was silent on the subject of language. Because the guarantees do not specifically refer to the teaching language, the belief has spread that these guarantees only cover the rights of Catholic and

Protestant minorities to separate schools. That may be true for Ontario. But the powers of local boards of the Separate Schools in Ontario and those of local boards of denominational schools in Quebec were not the same at the time of Confederation.

In Ontario the Ontario Council of Public Instruction had authority to direct the language of instruction by regulation. In Quebec the Quebec Council of Public Instruction had no right to determine or impose the language of instruction. By statute it was compelled to have "due regard" in the selection of school books, "to schools wherein Tuition is given in French and to those wherein Tuition is given in English". This requirement and other related provisions induced the legal committee of the Protestant School Board of Greater Montreal to give the opinion in 1969 "that any denominational school board legally erected by Order-in-Council since Confederation enjoys full constitutional protection of its rights of choice of language of instruction (as between French and English), as well as all other constitutionally protected rights, by reason of their denominational character". Quebec's Bill 22, superseded by Bill 101, violates those constitutional rights.

Since December 1979, the Quebec Federation of Home and School Associations and seventeen co-plaintiffs have had an application in the Superior Court of Quebec requesting that their Declaration of particulars against Bill 101 filed in December 1978 be inscribed on the rolls of the court for a hearing. After twelve months we are still awaiting a date to be set.

Article 23

Article 23 gives to Canadian citizens -- whose first language learned and still understood is either of the official languages -- the right to have their children educated in that maternal language when it is the minority language of the province. As parents living in Quebec, we must state our apprehensions about the Article. We have experienced the contrariness of legislation which imposes arbitrary categories on children dependent upon their parents' origin, status and education. We have seen such legislation about the choice of the parent as to what is in the best interest of his or her child. We know of families, for example, newcomers to this country seeking economic betterment, that have had the academic programmes of their children so distorted and disrupted their children now have poorer economic prospects than their parents. Such children, illiterate in both official languages, can form the base of a new class of 'disadvantaged'. Even families that have been resident in Quebec for thirty years can find themselves confronted with situations where their child's family heritage of language (a prime mission of the school) is denied as a language of instruction through measures imposed by legislation.

The child's parents -- without restriction as to citizenship or language -- are due more trust and responsibility for their children in education and in the other services the child may need. All parents, not only Canadian parents whose first language learnt was English or French, should receive support in terms of a constitutionally protected right of choice.

Deficiency of the Protection

The heading for Article 23 is "minority language educational rights". Quebec, no matter how one defines 'minority', accounts for the major segment of the population of official language minorities. If one thinks in terms of Canada's dual/duality as described by Sir George-Etienne Cartier on page 6,

then both official language communities in Quebec are minorities. Or, again following Sir George-Etienne Cartier, one can include only the non-French-Canadian population of Quebec. It, alone, is larger than the total population of all official language minority groups outside Quebec. Again, one may include only the population in Quebec whose public language is English -- it is as large as the total population of all official language minority groups outside Quebec. And the population in Quebec whose mother-tongue is English is 85 percent of the total official language minority groups outside Quebec. So depending upon how one defines minority in the dual/duality context of Canada, the minority in Quebec is 86.4, 56.2, 55.4, or 46.0 percent of the total population of official language minority groups in Canada. The impact of Article 23 of the Constitution Act, 1980, upon groups in Quebec is therefore the critical test of its intent and effect upon the educational rights of official language minorities in Canada.

In Table I below are the school statistics for the year 1976-77.

TABLE I
School Statistics -- Quebec
Year 1976-1977

(Source: Nathan H. Mair, Quest for Quality in the Protestant Schools of Québec, Gov't. of Québec, 1980, Appendix)

<u>Quebec</u>	<u>Pupils</u>	<u>%</u>
Whole school population	1536885	116.57
Elementary and Secondary	1318471	100.00
Catholic Elementary and Secondary	1189512	90.22
Protestant Elementary and Secondary	125668	9.53
Non-confessional, 2 boards	3291	0.25

Protestant Elementary and Secondary Public

Enrolment by Maternal Language

	<u>French</u>	<u>English</u>	<u>Other</u>	<u>Total</u>	
Outside Montreal	2526	16832	837	20195	
Greater Montreal	7203	81214	17056	105473	
Island Montreal	2675	48034	14153	64952	
Total - Quebec	9729	98046	17893	125668	(21.97%)

Enrolment by Language of Instruction

	<u>French</u>	<u>English</u>	<u>Total</u>	
Outside Montreal	195	20000	20195	
Greater Montreal	2313	103160	105473	
Island Montreal	1609	63343	64952	
Total - Quebec	2508	123160	125668	(20.39%)

Enrolment by Religious Denomination

	<u>Catholic</u>	<u>Protestant</u>	<u>Other</u>	<u>Total</u>	
Outside Montreal	4913	14165	1117	20195	
Greater Montreal	9768	63918	31787	105473	
Island Montreal	2783	38382	23787	64952	
Total - Quebec	14681	78083	32904	125668	(26.18%)

Catholic Elementary and Secondary

Enrolment by Maternal Language

	<u>French</u>	<u>English</u>	<u>Other</u>	<u>Total</u>	
Total - Quebec	1087355	59833	42335	1189512	(8.59%)

Enrolment by Language of Instruction

	<u>French</u>	<u>English</u>	<u>Total</u>
Total - Quebec	1093574	95938	1189512

Enrolment by Religious Denomination

	<u>Catholic</u>	<u>Protestant</u>	<u>Other</u>	<u>Total</u>
Total - Quebec	1178207	3295	7970	1189512

Table I enables one to identify the omission in the protection given by Article 23. Of the elementary and secondary school population, 12.0 percent have English as the maternal language, and 83.42 percent have French. The remaining 4.58 percent have neither. Article 23 grants the parents of this minority no constitutional protection against government interference with their choice of language for the schooling of their child. By our minimum estimate (some of the maternal language English and French may not be Canadian citizens) there are 150,000 potential or actual parents in this category in Quebec. Although they may in fact speak English or French as their public language today and indeed be actively identified with one of the official language communities, these parents, under Article 23, are not protected in their choice of public official language -- the immediate means of identity with a particular culture -- as the language of instruction for their children.

Broaden the Scope of Article 23

In the context of the foregoing deficiency and Canada's international obligations, QFHSA thinks the scope of Article 23 should be broader. In 1976 Canada acceded to the Universal Declaration of Human Rights of the United Nations which was adopted by the General Assembly in 1966. Article 26, paragraph 3 of that Declaration states:-

"Parents have a prior right to choose the kind of education that shall be given to their children."

'Prior right' in the quotation is intended to mean prior to the State. We think such a right should be in a charter of rights, without restriction as to nationality or mother-tongue. It would recognize parents as the authentic advocates for their children, and would promote equality of opportunity for children whatever their origins, status, class, language, religion, or sex.

Concept of Article 23 -- Collective Language Rights

Although QFHSA thinks Article 23 should be amended, it does not reject its basic concept. As the Article reads, it does not give full freedom to parents to choose the language of instruction for their child, although it does not deny such freedom of choice where it may exist. The Article actually gives parents the right to perpetuate an official language mother-tongue. In that respect its basic concept is the 'collective' right of a language group, rather than the right of an individual to free choice. In defining the concept, the Article is more a statement of a language policy for Canada than a statement of a constitutional right for Canadians. QFHSA does not reject the concept, although it has reservations about the language policy.

Collective Language Rights and Majority English-speaking Provinces

By protecting 'collective' language rights, the hope is to improve educational choice for provincial minorities by giving parents the right and option to dissent from instruction for their child in the language of the provincial majority. In majority English-speaking provinces, the introduction of a constitutional right in this regard is probably a valid improvement. The extent of improvement will vary by province, depending upon factors such as:-

- the size of the French-speaking community.
- how the province defines 'sufficient' for funding minority language educational facilities, and
- whether the members of the community already have and use constitutional rights as Roman Catholics to separate schools and school trustees.

It is difficult, therefore, to predict the degree of improvement. But insofar as the legislation makes it possible to ensure that the traditional

language of the minority community is readily available to the youth of that community and that that language can be used as the language of instruction for children and young adults for whom the minority language is their mother tongue, the legislation cannot but enhance the concept of Canada. Such 'Collective' language rights in the absence of legislative coercion are consistent with full freedom of the parent to choose.

Collective Language Rights and Quebec

In the province where the majority is French-speaking, Quebec, the relation between 'collective' language rights and the right of the parent to choose the language of instruction for the child is more delicate. Under the dual/duality concept of Canada, both the majority and minority official language communities can shelter under the heading 'Minority Language Educational Rights'. At Confederation, to accommodate the concern in French Quebec about the survival of their language and culture, the federal form of government was adopted and the jurisdiction over education assigned to the legislatures of the provinces. At the same time, to reassure the Anglo-Protestants in their concerns about language and schooling, constraints were imposed on the authority of the legislature of Quebec by inscribing in Section 93 and 133 of the B.N.A. Act school and linguistic rights, and, by paragraph 3 and 4 of Section 93, in effect making the Federal Government a co-guarantor of those rights. Further, it was provided that those rights could only be altered by the Parliament of the United Kingdom.

In this circumstance, Article 23 addresses a difficult task. It has to enhance 'minority language educational rights', as minority may be defined, without lessening the protection given the provincial majority by

the constitutional division of powers and without lessening the protection given the provincial minority by the constitutional guarantee of Section 93, namely that:-

"Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union."

'By Law' refers, in the above, to the Consolidated Statutes of Lower Canada, 1861. Under that law, at the time of Confederation the language of instruction was chosen by the school board not the Council of Public Instruction. Today, all but two school boards are 'denominational' (Protestant or Catholic). Their constitutional status in relation to Quebec's Bill 101 is now before the Courts. So it is possible that parents as a class already have minority language educational rights in Quebec insofar as Denominational and Dissident schools are involved. And those rights have no restrictions as to citizenship, maternal language, or 'sufficient' numbers.

Need for Flexibility in the Language Guarantee

Our concern, in the light of the uncertainty regarding the status of existing educational rights in Quebec, is that the wording of Article 23 should be sufficiently flexible that, while recognizing the 'collective' right to availability of schooling in the minority language, at the same time it acknowledge the right of a parent to be free of government interference in the choice of the official language for instruction of his or her child. Along with the right to be tried in the French or English language for criminal charges, the right to choose French or English for the language of instruction for the child is the educational right which most directly affects

individuals. And any enhancement of 'collective' rights should be in a manner which is consistent with such an individual educational right.

Federal Government Language Policy

The present wording of Article 23 is particularly disturbing because of what we have already learned of the Federal Government's language policy in regard to Quebec. In 1977 a policy statement was issued regarding official languages. In part it stated:-

"The concern to have immigrants to the province of Quebec attend French language schools is recognized. If the province is to be and remain a predominantly French language province, as the federal government believes it should, it is only natural to expect that people from other countries who immigrate to that part of Canada should participate in the French language community. However, the federal government is of the opinion that it is by far preferable that immigrants should be attracted to the French language educational system for reasons that do not include coercion. By the same token, it would be preferable if immigrants to the English-speaking provinces enjoyed a similar choice."

(A National Understanding, Statement of the Government of Canada on the official languages policy, Ottawa, 1977, p.20)

The federal government does not condone coercion in the choice of language of instruction. But Article 23 of the Constitution, 1980, does not protect the right to choose of those Canadian naturalized citizens and aliens whose native tongue is other than English or French. They may have become established members of the English or French language communities in terms of the language of the home, but they will have no constitutional basis for insisting their children receive their schooling in that language. We have already mentioned our estimate that there are, as a minimum, 150,000 potential or actual parents in this category. A number equivalent to half the population of Official Minority Language parents outside Quebec and Ontario.

Conflict with Canadian Citizenship Act

Insofar as such actual or potential parents with unprotected rights are naturalized Canadians, the effects of the Federal Government language policy and of Article 23 are in contradiction to the requirements of the Canadian Citizenship Act. Article 22 of that Act reads:-

"A Canadian citizen other than a natural-born Canadian is, subject to this Act, entitled to all rights, powers and privileges and is subject to all obligations, duties and liabilities to which a natural-born Canadian citizen is entitled or subject and, on and after becoming a Canadian citizen, subject to this Act, has a like status to that of a natural-born Canadian citizen."

We do not understand how one can enjoy 'like status to that of a natural-born Canadian citizen' and be denied like protection in regard to minority official language education rights on the basis of a characteristic that is involuntary in the same way as colour and sex.

QFHSAs Position

Quebec Federation of Home and School Associations favours the protection of minority language education, including a 'collective' right to an effective school system in that language. We are opposed, however, to inscribing in the Constitution language which permits discrimination in the application of language policy on the basis of an involuntary trait, maternal language, and which permits the denial to a segment of parents of a fundamental right -- the right to choose the language of instruction for their child.

RECOMMENDATION RE ARTICLE 23

We recommend that Article 23 be amended to eliminate the restrictions of citizenship, maternal language and sufficient numbers, and to incorporate the United Nations Declaration of the Rights of the Child. Such incorporation would declare children to be a class of persons with rights of their own which must be promoted and protected by all, and would set some constitutional goals to guide governments, agencies, and individuals in the measures they must undertake to improve the conditions of children and to support parents in their responsibility for their child's education.

ARTICLES 34 AND 43

Our objection to Articles 34 and 43 relates to the way they disturb institutional checks and balances that maintain an equilibrium of forces within the constitutional system. The compact or contract of which Henri Bourassa spoke was between the French and English of the old province of Canada. There were three minorities in that compact. Two minorities were at the local or provincial level: Catholics who wished separate schools in Ontario and Anglo-Protestants in Quebec. One minority was at the general or federal level: French-Canadians, particularly of Quebec. Constitutional rights for all of these minorities flow from the Confederation agreement. French Quebecers were protected by the adoption of a federal form of government wherein education was placed in the exclusive jurisdiction of the provinces with the exception of the provisions contained in Section 93 of the B.N.A. Act. As a result the French majority in Quebec could establish their own school laws. They thereby were assured of receiving an education in schools of their own design and in their own language, supported by taxes levied by a legislature in which French-speaking Quebecers would be a permanent majority.

The English-speaking minority in Quebec was also to be protected by Section 133, and by Section 93 which provided for denominational and 'dissentient' school rights in Quebec (and for separate school rights in Ontario), with a right of appeal to the Cabinet and authority for federal remedial legislation should it be necessary. Moreover, in Quebec under Section 80 of the B.N.A. Act there were thirteen designated provincial

electoral districts (out of 65) for which the boundaries could not be altered by the Legislature without the concurrence of the majority of the members representing those electoral districts. (Section 80 no longer has effect.)

To reinforce this distribution of forces within the constitutional system, the Federal government had the power of disallowance in relation to provincial legislation. Neither the provincial nor the federal legislatures, however, could alter or change rights or privileges granted with respect to schools or the use of English or French. Such changes had to be approved by the Parliament of the United Kingdom -- a disinterested body. In the words of Abbé Lionel Groulx, "the English Protestant minority in Quebec had received full security".

Patriation of the Constitution removes the function of the Parliament of the United Kingdom regarding the sensitive issues of linguistic and educational rights. Further, Articles 34 and 43 make it possible for a majority in the Federal Parliament and in a provincial legislature to eliminate separate, denominational or dissentient school rights, as the case may be. All that has to happen is for the provincial legislature and the Senate and House of Commons mutually to agree by passing resolutions in their respective houses, followed subsequently by a proclamation by the Governor General. The way is open accordingly, for the legislative majority in Quebec to destroy the countervailing checks and balances that were put in place at Confederation to protect its minority, and do that without losing its own privileged status as a minority group in Confederation. There is therefore a double-barrelled reduction in the security accorded the provincial minority.

In Quebec such reduction is at a critical time, when constitutional protection is highly relevant. We have already quoted from the federal document on official languages policy to illustrate its conflict with the Canadian Citizenship Act. One further quote is instructive regarding the jeopardy for the linguistic minority:-

"The federal government is firmly of the view that the French language should as generally be the language of work in the province of Quebec as the English language is in the province of Ontario, for instance." (op. cit., p. 69)

This policy ignores the compact of Confederation regarding protection of the linguistic minority in Quebec, and the responsibility of the Federal Government as a co-guarantor. As well it ignores demographic facts: in public language Quebec is 83 percent Francophone while Ontario is 94 percent Anglophone. Moreover, 10 percent of Quebec is unilingual English while 1 percent of Ontario is unilingual French. Nevertheless, the policy illustrates why minorities need constitutional rights and freedoms -- and why they must be fully secured beyond unilateral alteration.

RECOMMENDATION RE ARTICLES 34 AND 43

There are three ways to secure minority school rights beyond unilateral alteration by a provincial or federal government, or both.

1. Leave the repeal or amendment of denominational and dissentient school rights to the British Parliament.
2. Protest such rights by making their amendment be subject to the unanimous consent of all Provinces for the two year period, and subsequently be subject to the full amendment procedures of Articles 41 and 42.
3. Protect such rights by making their amendment be subject to the majority concurrence of all those on the tax rolls of denominational, dissentient or separate schools in the province affected.

We leave the choice for the Joint Committee after its assessment of the facts. But we recommend that the power to alter minority educational rights be restricted in one of the above ways.

ARTICLE 16

At the time of Confederation Sections 93 and 133 of the B.N.A. Act were secured by placing their change or alteration beyond the exclusive jurisdiction of federal and provincial legislators. Patriation in itself, consequently, diminishes the security of minority rights, and increases the necessity of self-restraint by the legislative majorities as protection for the minority. Constitutional guarantees should be conducive to such restraint by placing obstacles where potentially there could be a lack of self-restraint in government action.

Article 16 is an instance where there is potential for violation of minority linguistic rights. Paragraph 2 states:-

Nothing in this Charter limits the authority of Parliament or a legislature to extend the status or use of English and French or either of those languages.

The B.N.A. Act put beyond the exclusive reach of Canadian legislators the power to change minority rights in education and minority linguistic rights in the Quebec National Assembly and the Courts of Quebec. The Supreme Court of Canada has ruled that the attempt of Quebec's Bill 101 to make the Quebec National Assembly unilingual French was ultra vires. In contrast, the five words of Article 16(2) -- "or either of those languages" -- allow movement in the opposite direction. What those five words can do, in effect, is reverse the ruling of the Supreme Court on Section 133 and make not only feasible but constitutionally justified the suppression of the use of the English language in Quebec for other than social intercourse or commercial relations external to the province.

The words of Article 16(2) can be used, moreover, to change the fundamental nature of Canada as conceived by the Fathers of Confederation. Canada, as expressed by Sir George-Etienne Cartier on page 6 of this brief, and repeated by Henri Bourassa in a quotation on page 5 of this brief, was and is a dual/duality -- French-speaking a majority in Quebec and a minority in Canada; English-speaking a minority in Quebec and a majority in Canada. The five words of Article 16(2) make it possible -- and there have been such proposals -- to convert the dual/duality into a linguistic duality, i.e., Quebec French-speaking and the rest of Canada English-speaking. The five words, in effect, put the language rights of over one million Anglo-Quebecers at risk. Equally serious, it does the same for one million Francophones outside Quebec.

CONCLUSION

Canada has experienced tumultuous changes since Confederation in population, distribution of wealth, transportation, communication, and access to education. But there was a principle incorporated into the agreement at Confederation that is as fresh and relevant today as on July 1st, 1867. It is the right of parents as a class to dissent from the local majority choice.

The principle of dissent on religious grounds had been recognized before Confederation. It was entrenched in the B.N.A. Act as Section 93, and has moulded educational arrangements since. That principle should be modernized in the current revision of the Constitution to recognize in addition the principle of dissent in education from the provincial majority language group. And as in the instance of the religious dissent, the right of linguistic dissent should not be restricted by nationality, maternal language, or 'sufficient' numbers. As a corollary to such a right of linguistic dissent, there should be recognition that the dissenting parents have a right to locally elected school boards that reflect their linguistic and cultural values, and that have constitutionally protected access, on an equal footing, to public funding. Such a revision would be consistent with a constitution that provides educational language rights for two official language groups.

Quebec Federation of Home and School Associations finds it extraordinary that in a Charter of Rights and Freedoms, children only figure incidentally. They only have a right, in terms of 'minority language instruction', when their parents are citizens, have the minority one of the two official languages and the number of such citizens total more than some undefined 'sufficient' number. We think this view of the rights of

children is far too restricted. The reality is that schools are the institutions accessible to children in every community in Canada. It is impossible therefore to talk of educational rights without talking of children's rights in Canada. And we think that is what a Charter of Rights and Freedoms should do. It should set the basic premises for the Canadian democratic system, including a Canadian Bill of Rights for Children based on the United Nations Declaration of the Rights of the Child (1959). Once that has been agreed, the principles to be observed by governments, organizations and individuals serving children can be defined. Then ideally, all parents should have full freedom to choose the language in which their children will be taught. And if such full freedom jeopardizes the 'collective' right of the minority language because parents are not choosing their maternal language, then improving the quality of teaching is a more effective way of safeguarding the 'collective' right than restriction by legislation with the vexation and injustice it imposes.

QFHS is opposed to Article 23 as it now stands. It accepts the basic premise of a 'collective' language right, but it found the language policy it states is deficient in protecting the rights of a significant minority in Quebec. The deficiency can be repaired by making Article 23 consistent with the Declaration of Human Rights of the United Nations on parents' rights. The effects of Article 23 were also found to contradict the requirements of the Canadian Citizenship Act.

Finally, on the basis of its enquiry, QFHS recommends specific amendments for Articles 23, 34, 43 and 16:-

- * That Article 23 should be amended to eliminate the restrictions based on nationality, maternal language, and 'sufficient'

numbers, and to incorporate the United Nations Déclaration of the Rights of the Child.

* That, at the choice of the Joint Committee from three options offered, Articles 34 and 43 be amended to secure minority language rights beyond unilateral alteration by a provincial government, the federal government, or both.

* To exclude the real possibility of a fundamental change in the nature of Canada from a dual/duality to a linguistic duality, the last five words of Article 16(2) -- "or either of these languages" -- be deleted; or, the following be added:-
"provided the latter is not to the detriment of the other official language".

In closing may we, as parents living in Quebec who have been fighting for rights which are already in the Constitution -- the right of the school to choose the language of instruction -- may we testify, Mr. Chairman, that it has been a difficult task defending minority rights. Sir George-Etienne Cartier once said:- "Whether it came from Upper Canada or from Lower Canada, any attempt to deprive the minority of their rights would be at once thwarted." We can report, we have not been overwhelmed by assistance. Even though school rights in Quebec are entrenched in the Constitution beyond the jurisdiction of the province and beyond the exclusive vote of the Federal Parliament, and even though there is provision for appeal to the Federal Cabinet and for remedial legislation by the Federal Government, it still has been an uphill fight. How much more onerous defence would be, however, under the proposed 'Canadian Charter of Rights and Freedoms', where there are no provisions for appeal and no authority for a government to impose remedial legislation. We are not able to say what should be the nature of the provision for remedial action that is needed, but we are confident there should be some such provision.

This 1980 revision of the Constitution could be the start of a new era. The Canadian Charter of Rights and Freedoms, appropriately amended, could give to official language minorities a new sense of security and could put Canada back on the highway to its original goal according to Henri Bourassa "of complete equality of rights for all". It is a generous and intelligent goal which serves the best interests of Canada, and to which all of us can subscribe.