

Le Regroupement pour les
Droits politiques du Québec

BRIEF

To the Special Joint Committee
on the Constitution of Canada

Le Regroupement pour les Droits politiques du Québec RDPQ was incorporated on July 25, 1980 under part three of the Companies Act. Its purpose is:

- "(1) to proclaim, defend and promote the political rights of the people of Quebec;
- (2) to study, promote, protect and develop in every way possible the collective interests of Quebec society in political, economic, social and cultural areas."

In accordance with these objectives, the RDPQ wishes to make known to the Special Joint Committee on the Constitution of Canada its strong opposition to any attempt to patriate or amend the Constitution of Canada without the consent of Quebec.

Its opposition stems from the conviction that any step in this direction represents a serious threat to the identity of the people of Quebec and would be a profoundly upsetting factor in a government which professes to be federal. This philosophical objection therefore precludes the inclusion in the Canadian Constitution of a Charter of Rights and Freedoms which, in any case, is aimed only at protecting individuals and does not take into account the need to recognize their collective rights in order to make this protection effective.

The men and women of Quebec are a people

Quebec is not a province like the others; it is home to a people who have demonstrated their desire for collective survival and who have developed a distinctive personality through their institutions and way of life.

By virtue of the majority group of which it is composed, this is a people of the French language and culture; in addition, it is the home of this language and culture in North America. None the less, it considers itself a pluralistic society because it is also made up of cultural

and linguistic minorities whose contributions it has recognized by defending their individual and collective rights within the framework of the respect due to those of the majority.

A distinct people by virtue of their history and according to international law, Quebecers, in order to preserve their identity, must provide themselves with the political, cultural and economic powers necessary for their development as a people. And it is because the Government of Quebec, better than any other, embodies the realities and the interests of Quebec citizens that it must not only guard the rights it has acquired, but also insist on control over additional areas of jurisdiction. Thus, even the majority of Quebec federalists, while proclaiming their attachment to Canada, call for a redistribution of powers more favourable to the provinces.

The fact that with one Francophone to every forty Anglophones the majority in Quebec represents a minority in North America makes the need to protect Quebec's language and culture even more urgent.

Before defining themselves as Quebecers, Francophones saw themselves as French Canadians. For this reason, they were the first to express their feeling of belonging to Canada and sincerely believed they could live as full-fledged citizens anywhere in Canada. Events have cruelly contradicted this belief.

The treatment which hopelessly weakened most of the French Canadian minorities convinced them that Quebec, although they had not intended it to become their last refuge, could alone ensure their own safety. French Canadians in other provinces henceforth rightly came to define themselves in terms of Quebec, as Francophones-outside-Quebec.

Both the spirit and the letter of the proposed Resolution seriously jeopardize the foundations of Quebec society. The federal government is not only challenging the concept of the founding races, it is also denying the Quebecers their status as a people because of the existence of a minority in their midst. And since only a people possesses the right to self-determination, Quebecers may not avail themselves of this right.

There is even a refusal to recognize the majority status of French Quebecers; they are instead considered to be that part of the French Canadian minority which is concentrated in the province of Quebec!

The proposed Resolution undermines the very basis of the Charter of the French Language (Bill 101) by granting the right to enter the English school system in Quebec to the children of any English-speaking immigrant who has become a Canadian citizen, as well as to the children of any citizen who formerly resided in another province (even if their mother tongue was other than English), provided that one of them received instruction in English while living there (section 23).

To begin with, this Resolution gives to a parliament with an English-speaking majority the responsibility of asking a third parliament to limit the power of the Quebec parliament to protect the French language. It then further weakens the National Assembly by withdrawing from it the crucial power to define for itself the rights of the collectivity which it represents, and handing this power over to the courts who will interpret the federal charter imposed on it.

The Resolution runs counter to the spirit of federalism

The very notion of federalism requires a division of responsibilities between two levels of government, each

sovereign in its own area of jurisdiction. Moreover, the major governments agreed last September to consider Canada the result of the free association of the provinces. The central government, therefore, cannot proceed unilaterally to patriate the Constitution or to draw up an amending formula, especially since these questions directly affect the provinces.

The premiers of Quebec, in particular, have always ruled out even the possibility of patriation except as the finishing touch to a complete overhaul of the Constitution. They would have been all the more strongly opposed to unilateral patriation, which in any case is condemned by every one of Quebec's provincial political parties.

Not to take these factors into account is to hold democracy in contempt!

Custom holds that the provinces should always be fully consulted when an amendment might limit their powers. However, the limitation of provincial powers is just what the proposed Resolution adds up to. This is particularly serious for Quebec.

In this Resolution, the federal government, under the pretext of ensuring Canada-wide mobility, awards itself, among other things, the power to prevent Quebec from favouring its own labour force and thereby prejudices the greater use of French in the work place (section 6). Moreover, by means of the equalization principle, it puts itself in a position to use its spending power to intrude into areas of provincial jurisdiction by short-circuiting, as it has in the past, the priorities already established by the provinces (section 31).

By imposing its own language policy, the federal government has just as boldly entered the field of education, a move which affects not only the division of powers but also

the conditions for the full development of the Quebec French community (section 23).

This attitude bodes ill for future negotiations on the division of powers. Certainly, the government has committed itself to listening to the provinces at some time, but after, and only after, it has made its show of strength and set up the new rules of the game: on the one hand by having London modify the Constitution without provincial consent and, on the other, by threatening to go ahead once again without their agreement on the final working out of an amending formula. In addition, it has not hesitated to draw up a timetable so crowded as to make thorough consultation with the citizens of Canada impossible concerning the changes that it wants to make in the fundamental law of their country, changes the responsibility for which, moreover, has been delegated to a third parliament.

So much high-handedness should more properly be attributed to the fact that the head of government is in a hurry to finish up than to Canadians themselves, who have not, as has been claimed, been living for fifty-three years in a state of constant anxiety about patriating the Constitution.

But, the federal government will reply, at least in the twelve years that constitutional conferences have been held, taking the wishes of the provinces into account has led to an impasse: there is always one which does not agree at one time or another.

Without laying too much stress on the fact that this one has often been, and rightly so, the "province which is not like the others", the Prime Minister has chosen to break the deadlock for the benefit of the federal government and is asking us to believe that the latter will not subsequently abuse the advantage which it has given itself. This

will never be anything but another blank cheque, just like the one it asked for in the referendum.

But there is no need to accept this specious formulation of the problem. For the provinces are certainly not the only ones that ought to shoulder responsibility for the repeated failure of attempts at constitutional reform over the last twelve years; one can hardly put to their account, either, the upsurge of the Quebec independence movement during this same period or the rise of a strong sense of alienation in the West. The history of the last twenty years proves that there are other ways for a central government to initiate the unblocking of the constitutional logjam than to proceed unilaterally; one begins to wish that it would pay some attention to the recommendations of its own royal commissions.

Intervention is necessary, the Prime Minister asserts, because the provinces never agree on anything. Should they agree, he answers that "the existence of a provincial consensus is not sufficient grounds for shifting the federal point of view." He will even claim to see an ultimatum in such a consensus: this is then used to justify breaking off negotiations and resorting to a unilateral procedure - on the grounds of provincial dissension.

Should the premier of an inland province take it into his head to support the premier of a coastal province, the head of the federal government says he does not see what "interest" the former has in doing so. The central government wants to be the sole guardian of the national interest and the only one empowered to speak in the name of the "people".

Whereupon it adduces the example of the Fathers of Confederation, who gave this interpretation of national interest to the powers of reservation and disallowance. This is a revealing example because MacDonald abused these

powers to such an extent that the provinces, in exasperation, appealed to the Judicial Committee of the Privy Council in London; this body decided in their favour, declaring that the federal parliament should strictly limit itself to questions of indisputably national importance. One of the champions of provincial rights was Oliver Mowat, then Premier of Ontario, himself a Father of Confederation - which goes to show that there is not just one right way to think about federalism.

When it is not as defender of the national interest, it is as guardian of the liberties of the individual, that the federal government treats its provincial partners as adversaries. The very people who led the referendum campaign, painting in glowing colours the prospect of having two levels of government to guarantee the protection of these liberties, are now busy declaring that the central government is their only authorized guardian!

The entrenchment of individual rights and freedoms is just an illusion.

Apart from the fact that the Charter of Rights and Freedoms is unacceptable because imposed within the framework of unilateral patriation and without the consent of Quebec, the principle on which it is based raises grave misgivings.

A right, by definition, has an absolute character. But the very notion of the individual brings us back almost at once to the fortuitous happenings of real life and thus, back to what is relative. Individuals are unequal in terms of the power, status or wealth they possess. This inequality is almost always derived from the fact of their belonging to certain groups rather than to others. The right of an individual (unless it is accompanied by the recognition of collective rights) may often be nothing but the right to

stand alone to defend himself.

A hundred years of experience in Canada has shown that when individual rights, even where guaranteed by the Constitution, are not the subject of a restrictive interpretation or are not grossly violated, the very individuals who are supposed to benefit from them are reluctant to demand their enforcement in the face of excessively heavy social pressures. An entrenchment which, while enshrining these rights in the Constitution, at the same time proclaims their historical failure in the restricting formula "where numbers warrant", will change nothing.

If this limitation, which is scarcely in keeping with the absolute nature of a right, were withdrawn, as Mr Hatfield wishes, individual citizens would still have to bear the whole burden. The New Brunswick Premier realized this when, in the same breath, he expressed the hope that the minorities would be reasonable enough not to demand enforcement when it would create too many problems. What good is a right entrenched in the hope that it will not be used?

It is only in the last ten years that French-speaking lawyers have begun to make use of their right, although it dates back one hundred years, to plead before the Supreme Court of Canada in their own language, because, as Mr Justice L P Pigeon admitted himself, they used to be afraid of antagonizing the judges who spoke only English. Some young Franco-Manitoban lawyers acknowledged last May that they would demand higher fees from those clients who, taking advantage of the fact that section 23 was now being enforced in Manitoba, insist that the proceedings be conducted in French.

It will have taken eighty-nine years for the right to bilingualism, no matter how constitutional, to be re-established in Manitoba - enough time to jeopardize beyond

repair the survival of the Franco-Manitoban community. We have not noticed that the present government was in any haste to avail itself of the Constitution to right this wrong when it came to power.

Even now, the part of its Resolution which concerns the federal administration, limits the right of anyone to communicate with the government in his own language to places where "a substantial number of persons within the population use that language" (section 20). Here again, they want to entrench a historical failure.

Only Quebec, because of its strength, which guarantees real negotiating power, is in a position to obtain more equitable treatment for the Francophone minorities, as they themselves will in many cases admit.

Even a Francophone Prime Minister had to yield to pressures for the Anglophone unions who, unlike the Gens de l'Air, were opposed to instituting bilingualism in air traffic control - in Quebec; the latter still have grounds for complaint about the delay in enforcing the concessions finally obtained after arduous struggle. The Prime Minister also recently bowed before the Ontario Premier's refusal to extend the provisions of section 133 to his province.

And if it is true that the provincial premiers are secretly hoping (out of fear of reprisals) that bilingualism will be imposed on their respective provinces from above, this need to resort to force says a great deal about the respect that the "people" are likely to show toward it; the federal government can hardly claim that it is the people's special representative, when it has gone against their wishes in this way.

Only Quebec continues to show genuine tolerance toward its Anglophone minority, a tolerance which the head of the federal government himself praised last September.

Quebec's broadness of outlook is evident in its own Charter of Human Rights and Freedoms which offers much wider protection against discrimination, for it includes, among other things, protection against discrimination based on political convictions, a subject about which the federal charter is silent (section 15). This omission is even more revealing because the federal charter does not exclude recourse to the War Measures Act (section 1, 8 and 9).

In recent years, the gravest threats to individual liberties have come rather from the federal government: the enforcement of the War Measures Act and the machinations of the RCMP. Not only does the proposed Charter fail to recognize expressly the right of respect for privacy, but the same swords of Damocles remain suspended over Quebec.

The federal charter is especially eloquent in its omissions on the subject of rights and freedoms and in rents it makes in the fragile armour which used to protect Quebec's identity.

It is not surprising that the charter, along with the unilateral patriation and amending formula which makes it possible, has to be forcibly imposed by the only government whose interests it serves.

Le Regroupement pour les Droits politiques du Québec denounces the proposed Resolution as seriously undermining the political rights of Quebec on which it would impose, without Quebec's consent and under the pretext of offering an illusory protection for French-speaking minorities, a permanent status of official bilingualism, in addition to implicitly denying its people their right to self-determination. Moreover, this Resolution refuses to recognize the right of citizens to non-discrimination on the basis of political convictions and, without its consent, curbs the powers of the only majority French-speaking parliament in North America.

Recommendations

Le Regroupement pour les Droits politiques du Québec recommends that the Special Joint Committee on the Constitution of Canada (which, as the Honourable Senator George McIlraith reminded us, was set up expressly to protect the provinces), require the federal government:

1. to resume negotiations with the provinces;
2. not to proceed with the patriation and amendment of the Constitution, or with the drafting of a charter of rights or any constitutional reform, without the consent of the provinces;
3. to set to work along these lines, without delay, but without undue haste;
4. to take scrupulously into account the special character of Quebec.

(sgd)
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Secretary-treasurer