

BRIEF SUBMITTED

TO

THE SPECIAL JOINT COMMITTEE OF
THE SENATE AND OF THE HOUSE OF COMMONS

ON THE CONSTITUTION OF CANADA

AND TO

THE SPECIAL COMMITTEE OF THE
LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK

ON

CONSTITUTIONAL REFORM

BY

LA SOCIÉTÉ DES ACADIENS DU NOUVEAU-BRUNSWICK

DECEMBER 1980

velopment. Thus, they affirmed their distinctiveness vis-à-vis the Acadians of Prince Edward Island and Nova Scotia who had formed their own associations in 1919 and 1968 respectively.

To appreciate the true nature of our association, we should go back to the XIXth century when La Société Nationale l'Assomption (S.N.A.), later known as La Société Nationale des Acadiens, was formed by the Acadians of New Brunswick to ensure their development. The S.N.A. was created in 1881 at the first national Acadian congress which united over 5,000 Acadians who decided at that time to form an association to ensure their collective development and affirm their collective identity.

The Acadians began to define their collective identity and rise out of the shadow of deportation as early as 1840, that is well before the Canadian Confederation. In 1830, the Acadians of New Brunswick obtained the right to vote in the province of New Brunswick created by the Loyalists more than 40 years earlier. This period saw the election of the first Acadian legislators, the creation of the first French-language newspaper in the Maritimes and the first French-language school of higher education.

the Acadians were at one time or another stripped of their right to vote, to sit in an assembly, to hold a public office and to hold valid titles to the lands they occupied. Not to mention the deportation of the Acadians in 1755...

Since 1604, the Acadians have lived in a territory called Acadia where they have planted their roots and developed despite the ups and downs.

Rising out of the shadow of their deportation in the XIXth century, the Acadians have continued their struggle to this day. Their desire to further acadianize all sectors of Acadian life has manifested itself progressively first in the religious area by appointing Acadian bishops and creating Acadian parishes and dioceses in Acadian regions; then, in the educational area where their century-old struggle has sought to guarantee Acadian access to and complete control of their education system (preschool, primary, secondary and postsecondary); in the economic area by developing their own cooperative movement; and, finally, in the political area by a progressive increase in the number of Acadian members in the Legislative Assembly, by appeals for Acadian participation in the provincial public service and by efforts to

¹ La Société des Acadiens du Nouveau-Brunswick, Action Plan, May 1977, Les Héritiers de Lord Durham, p. 8.

create a typically Acadian political force.

"The strong desire of Acadians to establish themselves at the political level is due to the fact that, throughout their history, they have never enjoyed equality in the public or private institutions." (translation)²

Today, the Acadians still face serious problems which undermine their development. The assimilation rate which was 7.7% in 1971 is still a factor today and there is no indication that the situation will improve especially in view of the inadequacy of the Official Languages of New Brunswick Act in guaranteeing the language rights of Acadians. The economic situation of the Acadian regions of the province which border on underdevelopment forces the more dynamic elements of the Acadian population to leave for the more prosperous regions in the southern part of New Brunswick, Quebec, Ontario, the United States and lately the Western provinces and Northern Canada.

The representations of La Société des Acadiens du Nouveau-Brunswick at the federal and provincial levels have always sought to ensure that political projects respect the rights of Acadians and not restrict the development of the Acadian people in any way.

The objectives of our brief are as follows:

1. To establish the principles of constitutional reform which would guarantee Acadian rights;
2. To state the Acadian position on the inclusion of language rights in the Canadian Constitution presently under consideration;

² La Société des Acadiens du N.-B., Convention d'orientation nationale des Acadiens du N.-B., Part III, p. 15.

- 4.
3. To define the essential conditions for Acadian development both in respect of the Canadian Constitution and in the province of New Brunswick.

1. Principles of Constitutional Reform

As we indicated earlier, the Acadians realized well before Confederation that there are two main cultures in the Maritime provinces and especially in New Brunswick: a French culture and an English culture.

They have also demonstrated that, before now, equality between these two peoples has never been possible.

Constitutional reform should therefore aim to restore to the Acadians the rights to which they are entitled.

In its publication "Face to Face With a Failing Country", the F.F.H.Q. has eloquently stated the challenge of constitutional reform:

"The recognition of the two founding peoples as the first prerequisite of the federation is not an easy answer to a complex problem. On the contrary, it takes considerable intellectual effort to recognize that the present framework is inadequate, that it is responsible for injustices against the Francophones outside Quebec and that it is leading Quebec inexorably toward national sovereignty. It is even more difficult to propose a reform which, although indispensable, may create disequilibrium amongst the governing forces and cause insecurity amongst those who control the economy.

However, it is not difficult for Francophones outside Quebec, who must fight for every public service, every school and every CBC radio and television transmitter in their mother tongue, to imagine the disintegration of Confederation. The oppression of this second legally recognized "majority", often subtle and discrete, cannot

go on much longer. Now is the time for Canada to make a choice: let us either make the principle of equality a reality, (that is, entrenched in the constitution and reflected in the political institutions of the country,) or openly admit that equality is not possible and recognize that Quebec is the only government able to ensure the development of the French community in North America even though it encompasses only part of it.

But first we should emphasize that the new Constitution must reflect, not the conditions of a long-gone colonial era, but contemporary reality and Canada's objectives for the future. To translate this reality, and especially the principle of the equality of the two founding peoples and of the ten provinces into institutions and rights is not an easy task..."³

The new constitution must therefore be a general framework recognizing the present Canadian reality, that of two founding peoples who have the right to live their respective distinctiveness and diversity.

The new Canadian Constitution must take care not to become an obstacle to the development of Acadians in New Brunswick.

2. Language Rights in the Proposed 1980 Canadian Constitution

As a large number of francophone groups across the country have pointed out, sections 16 to 22 as well as section 23 of the Charter of Rights which deal with institutional bilingualism and education rights are unacceptable because of their lack of preciseness and lack of mechanisms for implementation and because they maintain the status quo. As drafted, these sections continue to place on the Francophones the onus of asserting their rights.

³ Face to Face With a Failing Country, pp. 5-6.

They are also unacceptable to the Acadians of New Brunswick as the province of New Brunswick is not subject to the provisions of section 133 and especially since their right to a complete education system has not been recognized.

The Acadians have for a long time demonstrated that bilingual schools are centers of assimilation and that only the community concerned can make the decisions which affect it in this matter. It is therefore out of the question to allow half-measures in the Constitution regarding francophone rights in Canada, and by the same token Acadian rights in New Brunswick in the area of education which is a primary vehicle for the development of a people.

La Société des Acadiens du Nouveau-Brunswick therefore rejects the sections of the Charter of Rights in the repatriation Bill which deal with language rights and which maintain the status quo for Francophones outside Quebec and especially for the Acadians of New Brunswick.

La Société des Acadiens du Nouveau-Brunswick supports the Quebec government's opposition to unilateral patriation by Ottawa which would reduce Quebec's ability to protect and promote the French culture without improving the situation of Francophones outside Quebec.

3. Acadian Development and the Canadian Constitution

La Société des Acadiens du Nouveau-Brunswick will only support a repatriating formula based on the principle of the two

founding peoples which would guarantee individual and collective rights to Canadians everywhere in Canada irrespective of the number of Canadians who request them. Consequently, this formula must not infringe upon areas of Quebec jurisdiction.

Thus, La Société des Acadiens du Nouveau-Brunswick requests the following essential conditions:

1. That the future Canadian Constitution recognize the principle of the two founding peoples;
2. That section 133 of the British North America Act be extended to all the provinces;
3. That Canadians have the right to use the official language of their choice before federal and provincial courts and in communicating with the departments and agencies of the federal government across the country;
4. That the right to education in the mother tongue from preschool to postsecondary instruction be recognized for the Acadians of New Brunswick and the Francophones outside Quebec as well as their right to homogeneous schools and school boards and to the management of their teaching institutions.

If Mr. Hatfield's espousal of the principle of the two founding peoples at the Conference of First Ministers last September was sincere, he must support the demands of La Société des Acadiens du Nouveau-Brunswick as well as a repatriating formula based on the recognition of these two peoples as separate and equal entities.

The new constitution must recognize the existence of two peoples in Canada, Francophones and Anglophones. It must also recognize that the francophone people are not homogeneous but composed of different factions each with its distinctiveness and history like the Quebecers and the Acadians for example.

The recognition of these distinctions, far from running counter to the general principle of the two founding peoples, would enhance it by adapting it to the actual diversity of the francophone founding people.

La Société des Acadiens du Nouveau-Brunswick therefore claims the right of the Acadians of New Brunswick to assume their distinctiveness and their right to self-determination.

4. Acadian Development and the Province of N.B.

The Hatfield government presently has a vital role to play with regard to the recognition of Acadian distinctiveness in New Brunswick because it is responsible for translating this distinctiveness into reality by establishing a linguistic duality within the political, economic, social and judicial institutions of New Brunswick.

La Société des Acadiens du Nouveau-Brunswick would support a Bill which recognizes the equality of the two official language communities of New Brunswick because this would open the door to the recognition of this distinctiveness by attempting to apply the concepts of duality and equality intrinsically tied to the principle of the two founding peoples.

However, Bill 84 would require many changes before it can accomplish this. Indeed, the Bill has been drafted in such vague and imprecise terms that it allows the government to avoid action. Section 1 mentions equality of rights but what are the rights in question? What are the cultural, pedagogical and social institutions referred to in section 2? Section 3 mentions positive measures but what positive measures are we talking about and what is meant by economic development? At present, Acadians make up only 18% of the public service; how does the Bill propose to establish equality? Furthermore, the Bill makes no mention of the measures needed for its implementation by the authorities. Finally, we can only hope that the government is more sincere this time than it was when it promulgated its Official Languages Act which came into effect only seven years after its adoption.

La Société des Acadiens du Nouveau-Brunswick therefore recommends:

1. That the Bill also apply to the political, judicial and economic areas;
2. That the Bill identify the francophone community as the Acadian people;
3. That the Bill contain appropriate provisions for its enforcement as well as provisions establishing individual and collective rights to legal remedies and that the courts be authorized to issue orders, impose fines and suspend or transfer public servants to enforce the law;

- 4. That the Bill include a plan for the revision of provincial statutes and institutions to adapt them to the principles stated in the act as well as establish a deadline to which the government would be committed;
- 5. That the Bill have precedence over other laws;
- 6. That the Bill provide for the necessary mechanisms and funds to right existing inequalities.

La Société des Acadiens du Nouveau-Brunswick also demands:

- 1. That the Hatfield government truly recognize the Acadian people as equal to the anglophone community of New Brunswick by committing itself to drafting a provincial constitution and by recognizing in the preamble the principle of equality of the Acadian people and the anglophone community.
- 2. That it recognize the Acadian right to participate in the drafting of this provincial constitution, which would be a major step toward a true recognition of the equality of the two language communities of New Brunswick, the Acadian people being one of them.

Bill 84 amended according to our demands would have significant importance and could be included in this provincial constitution along with a revised and improved version of the Official Languages of New Brunswick Act. This would constitute a giant step toward the recognition of the individual and collective language rights of the Acadians of New Brunswick.

Conclusion

The Acadians of New Brunswick are convinced that only a reform of the constitution based on the principle of the two founding peoples can ensure equality of status between the Franco-phones and the anglophone majority.

The Acadians of New Brunswick support the entrenchment of individual and collective language rights in the Constitution but are unwilling to settle for the half-measures proposed in the current repatriation Bill.

The Constitution must also recognize the distinctiveness of the Acadians of New Brunswick as well as their right to self-determination.

The task of translating this into reality falls mostly to the provincial government of New Brunswick. In addition to making substantial amendments to the Bill to recognize the equality of the two official language communities of New Brunswick, the provincial government, in order to ensure actual equality, must commit itself to drafting a provincial constitution which would affirm in the preamble the principle of equality between Acadians and Anglophones.

These are the measures by which the Acadians of New Brunswick can hope to gain access to the political, socioeconomic, educational and cultural instruments which would allow them to control their future as a people.

S.A.N.B. — La Société des Acadiens du Nouveau-Brunswick
80 Church St., Moncton, N.B. E1C 4Z2 Tel. 382-1655

December 1, 1980

Joint Clerks
Special Joint Committee on the Constitution of Canada
Post Office Box 1044
South Block
Parliament Buildings
Ottawa, Ontario

Gentlemen:

La Société des Acadiens du Nouveau-Brunswick would like to bring to the attention of the Joint Committee its opinions on the Canadian Constitution as outlined in the attached brief.

We would also like to appear before the Committee to present in person the opinions expressed in the brief. Please advise by telephone (506-382-1655) whether your schedule permits further appearances.

Please accept our apologies for the delay in submitting our brief.

Yours truly,

Georges Bourdages
Interim Secretary General
S.A.N.B.

Attach: Brief