A POLICY STATEMENT

TO

THE PARLIAMENTARY COMMITTEE

RESPECTING

BILL 1

PRESENTED BY

THE QUEBEC FEDERATION OF HOME AND SCHOOL ASSOCIATIONS

4795 St. Catherine Street West, Montreal, Quebec

JUNE 3rd, 1977

INDEX

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I INTRODUCTION

The Quebec Federation of Home and School Associations, formerly known as the Quebec Federation of Protestant Home and School Associations (hereinafter referred to as "Quebec Federation") is pleased to have the opportunity to present to the Parliamentary Committee of the National Assembly, the views of its membership concerning the proposed Bill 1.

Our membership is composed of some 12,000 families, and comprises one hundred local Home and 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 to Thetford Mines. 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 constitutes the largest, voluntary and independent parental educational organization in Quebec.

Quebec Federation was incorporated on August 27, 1959, by Letters Patent issued in virtue of the Quebec Companies Act. Among its objects

and purposes are the following:- To assist in the formulation 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.

Quebec Federation is a constituent member of the Canadian Home and School and Parent-Teacher Federation which this year is celebrating its fiftieth anniversary.

In order to make clear the fact that when Quebec Federation speaks it does so only after consulting its membership, the following background details are furnished.

Business is conducted at the Annual General Meeting by the delegates from each school, who comprise the governing body of the organization. Each geographical area of the Province appoints its own representative to represent the schools of that region on the Board of Directors, to conduct such business as may be delegated to the Board by the Annual General Meeting. The Provincial Executive, elected by the Annual General Meeting, administers the affairs of the Federation as directed by the local members through their delegates and area representatives.

For the purpose of submitting this Brief and Policy statement, the opinions of every affiliated association were solicited. In addition, a special meeting of association Presidents was held in order to draw the widest possible opinion from parents and their representatives. Therefore, while some individual members of this Federation may conceivably differ with the views expressed here, it is uncontestable that in this Brief, Quebec Federation is expressing the views and opinions of the vast majority of the English speaking parents who belong or are affiliated with this Federation.

II PRELIMINARY REMARKS

When the Government decides on public hearings it must show good faith by allowing adequate time for a detailed study commensurate with the importance of proposed legislation. In the case of Bill 1, the public has been given a period of 30 days in which to respond. We find this intolerable. As already indicated, the preparation of a policy statement on behalf of a Province-wide organization such as Quebec Federation is a very complex and time-consuming procedure. In recent years, every piece of proposed legislation affecting education matters, for example, was preceded by hearings and presentation of briefs within a period of not weeks, months or years, but days. Since Bill 1 deals with matters which affect the very survival of a large minority of this province, if not the Province itself, it behooves us to suggest, once again, that a reasonably adequate delay should be given to the public at large, certainly more than 30 days, in which to respond to and be prepared for public hearings.

III THE HISTORICAL PERSPECTIVE

French and English are authorized by Section 133 of the B.N.A. Act for the Legislature of Quebec and before the Courts of Quebec because the Fathers of Confederation recognized stark reality; of the eleven great architects of Confederation six were from the then Pre-Confederation Lower Canada - Sir George Etienne Cartier, Alexander Galt, Sir Etienne Taché, T. D'Arcy McGee, J.C. Chapais and Hector Langevin. Two of the six were distinguished spokesmen for the linguistic minority in what is now Quebec. Alexander Galt spoke for the Anglo-Protestants and D'Arcy McGee for the Irish Catholics. The minorities were then 24% of the total population of Quebec. Their spokesmen were concerned then, as we are now, to protect and preserve the cultural heritage of the children of their communities. They wanted their children to speak their language, develop their institutions, and contribute in their unique way to the growth and expansion of Quebec. And they were large enough in terms of political power, territorial distribution, and population that, if denied their desire for security, they could break up the soon to be founded country.

At that time, in Lower Canada there were seventeen electoral districts where the non-French speaking were in excess of 40% of the population. They were located in border areas such as the Ottawa Valley, the Eastern Townships, and in Montreal, as is evident in Table I which follows:

TABLE I

POPULATION OF NON-FRENCH ORIGIN
(Census 1871, taken from R.J. Roy, Languages in Conflict, McClelland and Stewart, Montreal, 1972, Chapter XVI)

	French	British	Other	Total	Non-French
Eastern Townships (counties Compton, Mississquoi, Shefford, Sherbrooke and Stanstead)	37,500	54,300	4,500	96,300	61.0%
Ottawa Valley (counties Argenteuil, Papineau, Hull, Gatineau and Pontiac)	28,600	35,500	1,900	66,000	56.0%
City of Montreal	87,000	57,000		144,000	40.0%
Bonaventure and Gaspé	19,700	10,900	900	31,500	37.0%
Quebec City and County	55,000	22,800	900	79,300	30.0%

Table I relates to four years after Confederation. At that time the non-French speaking were still a majority in eleven counties in Quebec, although they had lost the majority status in Montreal which they had had in the previous census of 1851. Moreover, these majorities were not created by newcomers or transients; over 80% of the inhabitants of these districts had been born in the Province of Canada in the division of Canada East. What their spokesmen were negotiating for at the time of confederation were not privileges but the preservation of their birth-rights.

Preceding Confederation, Ontario and Quebec had for some years been one province - the Province of Canada. The growth of the population of British origin was an increasing source of worry for French Canadians, who feared the prospect of becoming a permanent minority in the Province of Canada. They too were concerned to preserve their language, institutions, and culture. And they too were big enough to break up the soon to be founded country.

Thus both the French and the English of what was to become Quebec were concerned about minority rights under majority rule. The genius of Confederation was the acceptance of the pluralism that these concerns implied. The nation of Canada was to be a dual duality - the French-speaking a minority in Canada and a majority in Lower Canada (Quebec), and the English-speaking a majority in Canada and a minority in Lower Canada. Unity was to be achieved through recognition of duality, and that character was to be preserved by a division of powers that accepted the principle of 'self-administration of the minority', especially in community and school affairs.

For example, the division of powers proposed at Confederation would leave Quebec free to establish its own school laws. The majority would thereby be assured of receiving an education in schools of their own design and in their own language, supported by taxes levied by the legislature in which French-speaking Quebecers would be in a majority.

The fear of the French-speaking minority in Canada would thereby be assuaged.

But that very proposed division involved a transfer of education from the level of General Government where English-speaking Quebecers were part of a majority to a jurisdiction in which they would be a permanent minority. To agree to this change, they insisted upon and obtained constitutional guarantees regarding educational and representational rights both in the B.N.A. Act and in the constitution of the soon-to-be-formed province of Quebec. Section 133 of the B.N.A. Act embodied the dualistic (English and French) language philosophy - the Personality Principle. Any person in the debates of the Parliament of Canada or the legislature of Quebec, or before any Court of Canada or of Quebec, may use the English or French language at his choice as an individual right. The bilingual capability requirement was imposed upon the institution rather than upon the individual. As a collective right Section 93 granted the minority, according to confessionality (usually Protestant, and thus usually English-speaking, but in some areas Catholic and usually French-speaking) the right to dissentient schools, so that the principle of 'self-administration of the minority' flowed through to minorities in the provinces.

At the time of Confederation there was the idea of a compact between the English and French speaking in Quebec. In its concept it

was a linguistic and racial compact. Listen to D'Arcy McGee's testimony on this matter of a compact.

> And that there may be no doubt about our position in regard to that document, we say, question it you may, reject it you may, or accept it you may, but alter it you may not. It is beyond your power, or our power to alter it. There is not a sentence -- ay, or even a word -- you can alter without desiring to throw out the document. On this point I repeat after all my hon. friends who have already spoken, for one to alter a treaty is, of course, to destroy it.
>
> (K.A. MacKirdy, J.S. Moir, and Y.F. Zoltvany, "Changing Perspectives in Canadian History", Dent and Sons, Don Mills, 1971, p. 224.)

And here is the testimony of Sir George Etienne Cartier as to the nature of the compact:

> 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.
>
> (Ibid., p. 214.)

It is apparent what concept of nationhood the Fathers of Confederation chose. One that was founded not on cultural homogeneity but on cultural diversity. One that rejected intolerant, conformist, ideological monolithic nationalism, and in its place substituted tolerance, personal freedom and accommodation. These were the prerequisite conditions for the creation of Canada and for the population and territorial characteristics of Quebec.

As the Table on population taken from the 1871 Census (page 5) has shown, the English speaking community brought both population and territory to the soon to be formed province of Quebec. If the prerequisite conditions of tolerance, personal freedom and a mutual accommodation of both linguistic groups each to the other - in other words, the linguistic and social compact between the French and English speaking populations - had not been present, the arrangement would have been different territorially, or there might not have been any arrangement at all. In this respect the English-speaking minority in Quebec was different from all other minorities in Canada, for this minority could have blocked the Confederation that was to come into being.

Despite occasional stresses and adaptations, the concepts of Confederation maintained a relative equilibrium between the dual majorities/minorities for one hundred years. In that period Quebec

moved from a relatively rural and insular society to the threshold of the modernizing Quiet Revolution. With the advent of this latter, great hopes were nurtured in all Quebecers, English and French - hopes for more fulfillment and freedom of expression, for social change and reform, for greater democracy and better government in the province.

But with the Quiet Revolution in the 1960's language tension accelerated in Quebec while at the same time the equilibrium of the duality majority/minority relationship at the national level became unstable. To redress the situation the Federal Parliament and the legislatures of provinces with numerically significant French-speaking minorities -- Ontario, New Brunswick and Manitoba -- moved to supplement the B.N.A. Act regarding French language rights outside of Quebec. The Federal Parliament, as recommended by the Royal Commission on Bilingualism and Biculturalism, extended the 'personality principle' of the language policy by adopting the Official Languages Act. This Act embodied the dualistic (English and French) institutional language philosophy, and it was to be applicable in all areas within the competence of the Federal Government. Similarly, in Ontario, Manitoba and New Brunswick, legislation has been passed protecting minority rights of French-speaking citizens in these provinces (Ontario, The Public Schools Administration Act, 1970; Manitoba, An Act to Amend the Public Schools Act, 1966/67; New Brunswick, The Official Languages Act, 1969). In Quebec itself Bill 63 with its provision for freedom of

choice of language in education reflected the 'personality principle' of language philosophy, and reflected the nature of the pluralism of the province - English and French.

However, the institutional changes, plus the advent of a political team in the Federal Parliament that was predominantly French-Quebec influenced, did not fully redress the equilibrium. The nature of the political change meant that the French were a temporarily predominant political influence in Canada and a permanent majority in Quebec. The accession to power removed barriers to wider opportunity in the Federal government for French Quebecers, reduced their isolation and distance from decision-making, and increased the reflection at the federal level of their own values and aspirations. Yet despite the rapid increase of career opportunities, a discontent persists.

The Quiet Revolution has brought French and English-speaking Quebecers into direct large scale competition for the same things: for jobs and status and power in modern business and government. Quebec's private sector had been dominated for over 100 years by Quebec's English-speaking business community. In recent years they have recognized the need for equal opportunity in business for Quebec's French-speaking majority and in the process of adjustment the French have been moving into the top jobs at a 'gallop'. In the public sector, at the same time, a new salaried middle class has taken control of the

bureaucracy in Quebec and of the para-public enterprises. They are seeking more political and economic power at the expense of the traditional French and English-speaking business élites in Quebec. But they have not recognized the need for equal opportunity in government for Quebec's non-French-speaking minority. Whereas in Canada, French Canadians are 27% of the population and the Federal Government is apologetic that they only have 15% of the Federal Government's senior executive posts, in Quebec non-Francophones are 20% of the population and they hold less than 1/2% of all provincial civil service posts. Many anglophones feel blocked from fulfilling themselves because of the lack of equal opportunity in the public sector.

What Quebec needs are fair and temperate solutions to its social and language problems. The great 'leap forward' of the Quiet Revolution, with its consequent 'catching up' with the rest of N orth America through the expansion in education and government has generated a new middle-class French élite that has sought economic and social power by using the State as its vehicle. In the process, the collective and individual rights of the non-French-speaking minority that were guaranteed at Confederation and that had flourished for one hundred years have been seriously eroded. The principle of 'self-administration of the minority' has been progressively dismantled in the professions, in the social services, in local government, and in education. And the 'personality

principle' of language that was inscribed in the Constitution and that was re-inforced in the response of the Federal and other provincial governments in the late 1960's has been subjected to direct assault by Quebec language legislation. As a result English-speaking Quebecers, who wish to -- and have every right to -- continue to live in their province as first class citizens have begun to feel beseiged and aggressed against. The duality majority/minority relation in Quebec is in serious dis-equilibrium.

At the time of Confederation the view of Sir George Etienne Cartier was that the redress of such unbalance is achieved by the majority position of the English-speaking at the Federal level. Since 1968, however, we have heard much talk of the 'French Mafia' which dominates the Federal cabinet. Whether such domination is symbolic or a reflection of a political reality we do not know. But in the view of at least one distinguished former politician, the lack of response for so long by the Federal government to Quebec's Bill 22 "has placed the credibility of its own bilingual program in jeopardy right across the country". (John Turner, Address to The Canadian Club, Toronto, October 25, 1976.)

Despite the delays the constitutional constraints will have to be operative, for they are the fountain whence flow the tolerance, accommodation and freedom that constitute Canada as we know it. We are confident that after the legal confusion has cleared away, the solution to the language

crisis in Quebec will still have to be found in a political accommodation that recognizes language equality in Quebec. We do not believe such accommodation will be found by surgical adherence to the letter of the law while grossly violating its spirit.

We are not an agency for such accommodation, for we are not a political association. But they are our children who are the helpless pawns of the political manipulators. So we do have opinions regarding the failure of the constitutional safeguards for minority rights and about the abuse of provincial autonomy that was granted to safeguard majority rights. We know we are not unique in these concerns. Listen to the late Premier of Quebec, Daniel Johnson, arguing for the rights of the French minority:-

> It is important to recognize that there are fundamental rights, both individual and collective, which precede any constitution and which no majority may legitimately infringe....
>
> It is even fair to say that constitutions exist primarily for the protection of individuals and minorities. Majorities have other means of protecting themselves and may be tempted to abuse their powers.
>
> (Working documents used in the Constitutional Conference of July, 1968.)

Both segments of Quebec -- French speaking and non-French speaking -- have shared concerns about minority status.

Neither segment wants its sons and daughters to have to renounce their language and culture and assimilate in order to find a decent career.

We understand French Quebecers want to be able to work hard and make satisfying progress using the French language only. Why should our children, who love this province, have to move to Toronto or the United States to find equally satisfying opportunity? We need a united province, where all can participate fully on a basis of linguistic equality.

In that context, the basic premise of Bill 1 is wrong. Its language principles are not based on the North American experience of majority/minority accommodation, but rather on the Belgian experience of the last forty years. Bill 1 adopts a 'Territorial Principle' for language - that Canada consists of two unilingual regions - one English-speaking, comprising the existing nine English-speaking provinces, and one French-speaking, comprising the present-day Province of Quebec. This premise is in direct contradiction to the solemn compact undertaken at Confederation and in conflict with the 'personality principle' of duality (English and French) adopted by the Federal Parliament and those provincial legislatures that have responded on the basis of good neighbourliness to the language crisis of Quebec. Moreover, the premise of a unilingual Quebec ignores the social and historical reality of Quebec - that for two hundred years and still today, Quebec embraces two distinct linguistic and cultural communities. Even the Quebec Government's own Gendron Commission, in considering the 'territorial principle' at the provincial level recognized that the application of this principle by the establishment

of the province of Quebec as a unilingual French-speaking region would have to except Montreal therefrom as a fully bilingual special district (The Position of the French Language in Quebec, p. 69). In fact, as we have already shown, there are other sections of Quebec which historically at the time of Confederation were majority English-speaking. Even today such areas contain substantial English-speaking minorities whose constitutional and inherent rights to cultural survival and renewal are threatened by Bill 1. Associations in these areas are members of our Federation, and we are not willing to tolerate the abridgement of their birthright and heritage.

The exclusive - and excluding - quality of Bill 1 legislation, enhancing the French, and diminishing and in some cases prohibiting the English language, will harvest bitterness and resentment from which in the long run no one in Quebec will escape.

Of the dependency of each man upon all other men, no one has written so effectively as the 17th century cleric John Donne. So it is in Quebec:

> No man is an island entire of itself; every man is a piece of the continent, a part of the main. If a clod be washed away by the sea, Europe is the less.... Any man's death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bell tolls; it tolls for thee.
>
> (Meditations, XVII, 1624)

If Bill 1 is not amended to recognize the right of English-speaking Quebecers to a full and unhampered collectivity in their native province of Quebec, eventually the arguments used against the so-called 'privileged' English-speaking Quebecers will be turned against the so-called privileged and cossetted French Quebecers, ...for no man is an island.

By working together with mutual respect and accommodation on both sides, we - French and English - can build a strong and beautiful Quebec. But a strong and beautiful Quebec will not be built upon the bones and burnt-out remains of the English-speaking Quebec collectivity.

IV OBSERVATIONS ON BILL 1

(A) Our first impression about Bill 1 is that it is not really a Charter, in the sense that Charters have generally come to be know to man, throughout history. We consider the term Charter wholly inappropriate to the contents of the Bill. According to Webster's New WorldDictionary, the term Charter refers to,,"a franchise or written grant of specified rights made by a government or ruler.... a document setting forth the aims and principles of a united group, as of nations; i.e., Charter of the United Nations." In no instance are Charters known to deny or curtail rights or privileges. Yet Bill 1 does precisely that. While it pretends to convey rights to a given class or category

of persons in Quebec, at the same time it encroaches upon, abuses, represses and suppresses another class or category of its residents. Charter is a lofty term but totally inapplicable to the principle thrust of Bill 1. Let us not be like Humpty Dumpty who thought he could make a thing so by saying it was so.

(B) The second observation to be made about Bill 1 is that while it is generally considered to be a "Language" Bill, it is in actual fact considerably more than that. Indeed, when we consider the sum total of its provisions, which affects Legislation, the Courts, the Civil Administration, the semi-public agencies, labour relations, commerce and business and the language of instruction, it is readily seen that the Bill is an instrument which, if enacted, is of a nature to transform the whole fabric of our society -- in one fell swoop. Further, when the Bill's provisions relating to the Francization of services and business firms and the Commission de Surveillance and Inquiries are examined, one can only shudder at the transformation which is being proposed.

What we perceive in Bill 1 is a transformation of Quebec society from an Open Society to a closed one. A society in which the civil liberties of its individual citizens, ALL of its citizens, are being sacrificed on a pretense of collective need. A society where human rights are being encroached upon and suppressed in order to achieve a supposed goal of the primacy of the French language and culture in Quebec, irrespective of the means chosen to achieve it. Perhaps the clearest illustration of this

manifestation, is how the proposed Bill is meant to override the Human Rights Charter of Quebec, although as will be seen, this is not the only instance where the rights and liberties of its citizens are being trampled upon.

It is for this reason that this Brief and Policy Statement, although emanating from a parental organization interested primarily in educational matters cannot content itself with limiting its commentary to the provisions of the Bill as they relate to language of instruction only, but must necessarily comment on all aspects of the Bill.

(C) Our third observation relates to the impreciseness and ambiguity in the proposed Bill. This is primarily due to the lack and absence of definitions in the proposed Bill. This absence of definition is all the more obvious and glaring when it is observed that Titles II, III and IV do carry interpretation sections but Title I, which is the substantive part of the Bill, does not.

A large number of words and terms in the proposed Bill cry out for definition. Principal amongst these are the following:- "Quebec People"; "Quebecer"; "Interested Person"; "Appropriate"; "Satisfactory Knowledge"; and others. Statutes normally refer to "Persons" as being affected by legislation while in Bill 1, the distinctive term "Quebecer" is being utilized. It is not enough for Ministers of the Crown to state publicly what these and other terms mean -- they must be spelt out in the Bill and in the

law so that the legislature says what it means and means what it says.

(D) Our fourth observation flows from the lack of definitions in the proposed Bill 1, namely, that the Bill does not treat all of its Quebec residents equal and alike. To declare, as Bill 1 does, that a given segment or group of its residents, albeit a majority of its residents, is entitled to certain rights as regards use of language, services, protection under the law and freedom of expression, while another segment or group of Quebec, albeit a minority, is not, constitutes discriminatory legislation.

The proposed Bill in effect distinguishes between its French speaking residents and the others. It thus separates and divides. It breeds a policy of closure and isolation. It certainly does not create a basis upon which the majority and minority in Quebec can work together. It sets its compass to irreconcilable conflict.

More importantly, not only does the Bill pretend to convey certain rights and privileges to one class of residents and not to another, but it additionally, restricts, coerces and suppresses a minority segment of its residents, in discriminatory fashion. To state, for example, that commercial advertising must be in French alone or, that only the French version of a firm name may be used in the Province , are merely two illustrations of such discrimination contained in the Bill.

After all, it must be remembered that the proposed Bill is being tabled by a government representing all the people and not by a political

party acting for and on behalf of one segment of society. It is therefore encumbent upon the government to treat its citizens fairly and equally, as is wont in a democratic society.

V PRIMACY OF FRENCH LANGUAGE AND CULTURE IN QUEBEC

Insofar as the basic goal of Bill 1 seeks to assure the primacy of the French language and culture in Quebec it is heartily supported by Quebec Federation, although our Federation does not believe such a Bill to be necessary at this juncture of Quebec's historical development. Quebec Federation and its membership throughout the Province is wholly sympathetic to the natural desire of the French majority in Quebec to make of this Province a centre of French culture that is strong, secure and expansive.

In the view of many, Quebec is and will remain the principle centre of French culture in Canada and North America and we see no danger whatever to the survival of the language or culture despite certain prophets of gloom. In our opinion it is purely a myth to suggest that the French language or culture is in jeopardy, in the fourth quarter of the 20th century.

Therefore, while this Federation supports and sympathises with the aims and aspirations of the French majority and, indeed, has been in the vanguard in such programs as French immersion classes and the acceptation of the French fact with an ever increasing momentum, we are

unalterably opposed to the provisions of Bill 1 which seek to undermine the civil liberties and human rights of Quebec citizenry.

It is important to stress that when we speak of curtailment and encroachment of civil liberties and human rights, we refer to such infringements as affecting all residents of Quebec and not merely those of either Anglophone, Francophone or Ethnic background. As Abraham Lincoln said:-

> "To remain silent when your neighbour is unjustly persecuted is cowardice; to speak out boldly against injustice when you are one against many, is the highest patriotism."

Therefore, while we agree that immigrants, for example, should be encouraged to integrate with the French community and to attend French schools, we vigourously defend their rights as individuals in a free and open Society to have free choice of language and language of instruction.

VI BASIC FLAWS IN THE PREAMBLE

There are two basic flaws which we perceive in the Preamble of the proposed Bill 1, namely; first, that the French language has always been the language of the Quebec people; and secondly, that Bill 1 deals fairly and openly with the minorities of Quebec. Because the Preamble of a piece of legislation is of great importance in the interpretation of a given statute one must pay particular importance to it.

(A) It is undeniable that French has always been the language of a majority of the Quebec people, but to deny the existence of the English presence during Quebec's 200 year historical development is to misread history or deny history altogether. No preamble can be sustained ona false premise. Without going into the greatest of historical detail on this point, mere reference need be made to the Fathers of Confederation decision to enshrine in the B.N.A. Act a guarantee of both French and English language rights in Section 133. The Gendron Commission itself appears to share this view of the equality of the two languages in Quebec for it says:

> "Although the BNA Act nowhere uses the term official language, Section 133 may be considered, for present purposes, as amounting to the same thing in its stipulations."

(Volume 2, pp. 23 & 26, Gendron Report)

As we know, Section 133 of the British North America Act stipulates that the two languages may be used in the Debates in the Federal Parliament and the Quebec Legislature and in Pleadings and processes in all Federal Courts and in all the courts of Quebec; while the two languages must be used in the Records and Journals of these legislatures and in the printing and publication of their statutes.

It is not unnoteworthy that this Section was made binding as regards legislation, at the demand of several French-speaking delegates, Félix Geoffrion and A.A. Dorion. Thus it can be seen that it was at her own

request that Quebec was bound by Section 133 in return for an equal binding of the English majority in the Federal Parliament. In his "History of Canada", Sir Thomas Chapais writes, "It was undoubtedly a great national victory. Never was so good a bargain made by the French minority for now French is an official language in Federal matters from Newfoundland to British Columbia".

Allusion has been made by Ministers of the Crown to the possibility of Quebec amending this Section of the BNA Act if need be, but the unanimous judgment of the Supreme Court of Canada, in upholding the Federal Official Languages Act, makes it clear that Section 133 is not part of the Constitution of the Province and hence is not included within the provincial amending power. Thus the right to use <u>either</u> language in the courts and <u>both</u> of them in the legislation of Quebec, is guaranteed. In fact, the Supreme Court makes clear that even the Federal Parliament itself is not competent to amend the Section. (1975 2 SCR 182)

As recently as December 19, 1969, the Government of Quebec recognized that French and English were both official languages. In the "Accord de co-opération et d'échanges en matière d'éducation, de culture et de communications", signed between the Governments of Quebec and New Brunswick, it was declared in the Preamble, as follows:

> "Reconnaissant que le français et l'anglais son les deux langues officielles du Québec et du Nouveau Brunswick".
>
> (Gendron Report, Volume 3, p. 412)

Although the Federal Government's "Act Affecting the Status of the Official Languages of Canada", otherwise known as the "Official Languages Act of Canada" 1968/69, recognizes both the French and English languages as the official languages for Canada for federal purposes, it nonetheless affects and relates to the Province of Quebec and the Quebec people. Section 2 declares:

> "The English and the French languages are the official languages of Canada for all purposes of the Parliament and the Government of Canada, and possess and enjoy equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada."

Moreover, the adoption by the Province of New Brunswick of an Official Languages Act recognizing both French and English as official languages is further testimony that the trend in Canada is not to curtail or deny, but to increase, upgrade and protect language rights. It would appear, therefore, that the Preamble of Bill 1, in addition to being misleading, constitutes a retrograde step with respect to linguistic progress as regards the use of the French and English language throughout this country.

(B) Dealing fairly and openly with Quebec's minorities

One must search far and wide within the 177 sections of Bill 1 to obtain any evidence or indication that the Bill deals fairly and openly with the minorities of Quebec as it purports to. In our respectful opinion it is not an exaggeration to state, quite categorically, that the Bill deals rather unfairly, punitively and perniciously with the minorities of Quebec. We repeat, let's

not be like Humpty Dumpty, who thought he could make a thing so by saying it was so.

In no instance of the Bill are minority rights protected unless it be in Section 59 where the Amerinds and the Inuit are declared to be entitled to receive their instruction in their own language. But even in this instance, this minority is denied the right to their instruction in the English language should they opt for it.

In no instance does the Bill grant or protect any minority rights, it merely encroaches upon and restricts them. To suggest otherwise, as the Preamble appears to do, is a perversion of the truth. As Henrik Ibsen said: "The most dangerous enemy to truth and freedom amongst us is the compact majority."

It ought to be obvious to the Government that proposing laws which have for their effect the denial of the use of the English language in the Courts, the Civil Administration, semi-public agencies, in commerce and business and in the field of education and language of instruction, is not quite the same as passing laws prohibiting parking on one side of the street on a given day. Since the Bill in reality coerces rather than encourages, orders sanctions rather than provides incentives, it is evident that either the discriminatory provisions of the bill, as they affect Quebec's minorities are removed or, alternatively, the third paragraph of the Preamble is deleted; but, to allow both to remain is a contradiction.

VII A SOCIETY GOVERNED BY THE RULE OF LAW

We live in a free society. We were born free and we wish and intend to remain free. Law is the fabric of a free society. No substitute exists. Without voluntary acceptance of decisions arrived at by constitutional processes, there can be neither freedom nor justice. Our society is free because it depends not upon force but upon the rule of law; and the rule of law depends upon voluntary compliance. The Quebec community must be made to appreciate the importance of preserving the rule of law and when challenges to the Rule of Law occur, even by the Government itself, it must insist upon voluntary compliance. Those who stand silent in the face of such a challenge impair the rule of law. In other words, we must insist upon the Rule of Law rather than the Rule by men.

The golden eras of man's past have always been those where the Rule of Law has prevailed, providing order, growth and progress. The regressive eras of man's past have always been those where the Rule of Law has broken down, bringing chronicles of fear, repression and tragedy.

As Quebecers and as Canadians we are the inheriters and indeed, the beneficiaries of the Rule of Law. Whether emanating from the Great Charter of the Magna Carta of 1215, or from "An Act for the Protection of Human Rights and Fundamental Freedoms", being part of The Bill of Rights

of Canada assented to in 1960, or the British North America Act, 1867, we possess inalienable and unchallengeable human rights and civil liberties. Amongst these rights and liberties are Freedom of Worship, Freedom of Speech, Freedom of Free Expression, Freedom of Assembly and Association, Freedom of the Press, and Freedom to the use and enjoyment of Property. These are freedoms to be enjoyed by the individual, as against the collectivity, of society.

Quebec Federation perceives in Bill 1 a threat to certain of these freedoms. Quebec Federation considers Bill 1 a threat not merely to Quebec's Anglophone minority but to its Francophone majority as well. Insofar as they constitute threats to freedom of expression, freedom of speech, freedom of the press, they deny civil liberties to all.

The Supreme Court of Canada, in striking down as ultra vires the "Act Respecting Communistic Propaganda of the Province of Quebec", otherwise known as the Padlock Law (1957 SCR 285), declared that "it constituted an unjustifiable interference with freedom of speech and expression essential under the democratic form of government established in Canada."

In reply to the contention that the Province was vested with unlimited legislative power over property and could act as amply as if it were a sovereign state, untrammeled by constitutional limitation, the highest court in the land denied such assertion, when Mr. Justice Rand

declared, "I am unable to agree that in our federal organization power absolute in such a sense resides in either Legislature."

Mr. Justice Abbott stated, ".... the Canadian constitution being declared to be similar in principle to that of the United Kingdom, I am of opinion that as our constitutional Act now stand, Parliament itself could not abrogate this right of discussion and debate."

The Court went on to declare (pp. 306-307), ".... Freedom of discussion in Canada, as a subject matter of legislation, has a unity of interest and significance extending equally to every part of the Dominion. With such dimensions it is ipso facto excluded from head 16 as a local matter. This constitutional fact is the political expression of the primary condition of social life, thought and its communication by language. Liberty in this is little less vital to man's mind and spirit than breathing is to his physical existence. As such an inherence in the individual it is embodied in his status of citizenship."

The Supreme Court quoted, approvingly, the words of Taschereau J., when he recalled that:

> "This law is the just sequence to the excellent institutions which we have borrowed from England, institutions which as regards civil and religious liberty leave to Canadians nothing to envy in other countries."

In the same case, Mr. Justice Kellock reproduced from the works of Mr. Justice Mignault's work, Vol. 1, page 131, the following statement

which he had invoked in a previous landmark judgment of Saumur v. City of Quebec in 1953:

> "Les droits sont les facultés ou avantages que les lois accordent aux personnes. Ils sont civils, politiques ou publics....
>
> Certains droits existent qui, a proprement parler, ne sont ni civils ni politiques; tels sont les droit de s'associer, de s'assembler paisiblement et sans armes, de pétitionner, de manifester sa pensée par la voie de la presse ou autrement, la liberté individuelle et enfin la liberté de conscience. Ces droits ne sont point des droits civils, car ils ne constituent point des rapports de particulier a particulier; ce ne sont pas non plus de véritables droits politiques, puisqu'on les exerce sans prendre aucune part au governement du pays. Quelques personnes les rangent dans une classe partculière sous la dénomination de droits publics."

In our respectful opinion, the right of communication by means of one's language is an essential ingredient of the fundamental freedoms of the freedom of speech, freedom of expression and freedom of the press and any legislation which tends to abrogate, suppress, restrict or deny altogether their use, would constitute an infringement on such rights which are guaranteed under our constitution.

It is our view that the provisions of Bill 1 seek to abrogate, suppress and deny the use of the English language in Legislative matters, the Courts, the Civil administration, the semi-public agencies, in labour relations, in commerce and business firms and in the field of instruction and education, and in so doing, the Bill 1 is a flagrant violation of the Rule of Law.

In the landmark case, Saumur v. City of Quebec 1953 2 SCR 299, the Supreme Court of Canada declared that provincial legislation in relation to freedom of the press is not civil rights or matters of a local or private nature in the Province (as the Province of Quebec had argued) and that a by-law adopted in virtue of such Provincial legislation was ultra vires and beyond the legislative power of the Province. As Justice Kellock states, ".... the by-law impinges upon freedom of religion and of the press which are not the subject matter of legislative jurisdiction under Section 92 of the B.N.A. Act."

Applying these principles to some of the provisions of Bill 1, such as Section 46 which declares that "Commercial advertising must be in French alone", one is forced to conclude that these and similar sections in the Bill, are beyond the legislative jurisdiction of the Province.

Reference was made earlier to the judgment by the Supreme Court of Canada in the case of Leonard Jones vs. the Attorney General of New Brunswick (1975 2 SCR 182), when the court upheld the validity of the Federal Official Languages Act. Two statements by the Chief Justice are of particular importance in the interpretation of Section 133 of the BNA Act and its relationship to the official status of the French and English languages. The Chief Justice declared: (at p. 193)

> "On its face, Sec. 133 provides special protection in the use of English and French, there is no other provision of the British North America Act referable to the Parliament of Canada (apart from Sec. 91(1) which deals with language as a legislative matter

> or otherwise. I am unable to appreciate the submission that to extend by legislation the privileged or required public use of English and French would be violative of Sec. 133 when there has been no interference with the special protection which it prescribes."
> ."

And again, at page 195, the Chief Justice added:

> Section 91 (1) aside, there are no express limitations on federal legislative authority to add to the range of privileged or obligatory use of English and French in institutions or activities that are subject to federal legislative control. Necessary implication of a limitation is likewise absent because there would be nothing inconsistent or incompatible with Sec. 133, as it relates to the Parliament of Canada and to federal Courts, if the position of the two languages was enhanced beyond their privileged and obligatory use under S. 133. It is one thing for Parliament to lessen the protection given by Sec. 133; that would require a constitutional amendment. It is a different thing to extend that protection beyond its present limits."

It must therefore be concluded from this most recent judgment of the Supreme Court of Canada that this particular Section is entrenched in the fundamental law of the constitution and cannot be changed without amending the B.N.A. Act itself -- something that requires, by custom, if not by law, the consent of all provinces as well as of the federal government. Moreover, to the extent that a Provincial Legislature did possess jurisdiction to amend, such amendment could only enhance or extend our fundamental rights and freedoms. It could not lessen, abridge or interfere with them.

What is most alarming and unfortunate from the perspective of the Rule of Law, is that the Government, in attempting to manipulate this Section 133, is paying mere lip service to the spirit of the law.

VIII VIOLATIONS OF HUMAN RIGHTS

The most obvious illustration of Bill 1 constituting an infringement on the human rights of the people of Quebec is the provision of Section 172 which exempts the Bill from the provision of Section 52 of Quebec's Charter of Human Rights and Freedoms. In so doing, the Government in effect is telling the people of Quebec, indeed the entire world, that the various freedoms, liberties and human rights spelt out in Sections 9 to 38 of the Human Rights Charter, shall no longer be applicable to its citizens. This is a sad commentary indeed.

Amongst the sections exempted, is Article 10 of the Human Rights Charter which gives every person a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, civil status, religion, political convictions, language, ethnic or national origin, or social condition. It becomes instantly clear that in extending the exemption, the Government is cognizant of the fact that discrimination is an integral part of Bill 1, otherwise why Section 172?

But that is not all. Bill 1 is in direct conflict with the Preamble of the Charter of Human Rights and Freedoms, as well as other sections, such as Article 28, which gives every person arrested or detained a right to be promptly informed in a language he understands, of the grounds of his arrest or detention. Bill 1 would abrogate such right.

As already noted, the freedom to worship, freedom of speech and freedom of the press are among those freedoms which have been guaranteed and enshrined in the Canadian Bill of Rights assented to in 1960. We consider many of the provisions of Bill 1 to be an infringement upon and violation of the Bill of Rights. In our view, restricting firm names to only French ones, such as Article 48 provides, or obliging all lettered messages for example, to be in French only, as Article 46 does, constitutes a violation of the freedom of the press and is beyond the legislative jurisdiction of the Quebec legislature, in our respectful view and opinion.

IX LANGUAGE RIGHTS AND EDUCATION

Freedom of parental choice of schools is an integral part of the history of education in the Province of Quebec. Bill 1 represents such an abrupt break with and rupture of this historical development that it constitutes a substantive change of a most serious and undemocratic nature. We consider the entire chapter VIII dealing with the language of instruction to be ultra vires of the Provincial legislature.

Parental choice of schools and language of instruction has been acknowledged in the law time and time again, both prior to and following Confederation. These rights of parental choice derived from the Act of Union of 1840 and were protected in the 1861 Consolidated Statutes of Lower Canada, and later enshrined in the B.N.A. Act. While it is acknowledged that the rights which were guaranteed were deemed to be denominational rights, the dual system -- Roman Catholic and Protestant -- has always

corresponded to the language differences. Since, at the time of Confederation and even before, there were virtually no English speaking Catholics or French speaking Protestants, it was justifiable to equate Catholic with French language education and Protestant with English language education.

The concept that parents should have the right to choose the institutions "which according to their convictions, ensure the greatest respect for the rights of their children", is acknowledged by the Quebec Superior Council of Education, in the Preamble of the Superior Council of Education Act. (R.S. 1964, c.234)

This concept of parental choice is so recognized among civilized nations that it is found enshrined in the Universal Declaration of Human Rights of the United Nations which was adopted by the General Assembly in 1966, and acceded by Canada on May 19, 1976. Article 26, para. 3 declares as follows:

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

It is important to note that "prior"right is intended to mean <u>prior to the State</u>. This right of parental choice is not merely of peripheral moral value but is binding upon Canada and each of its Provinces, including Quebec, since it was acceded to only following a Federal-Provincial Conference on Human Rights, held in December 1975, at which time it was ratified and adopted by the two levels of government.

In becoming a party to and bound by the provisions of the Declaration, Quebec had taken an important step in the recognition and protection of human rights and fundamental freedoms. Are we now to assume that Quebec has decided to turn its back to the international community and violate the guarantees which it undertook to extend to its citizens?

Sections 51 and 52 of the proposed Bill 1 moreover appears to violate the UNESCO Covenant against Discrimination in Education, adopted in 1960, which prohibits any discrimination in education based on "race, colour, sex, language, religion, political or other opinion, national or social origin". The Covenant requires States to give foreigners within their territory the same access to education as that given their own nationals. Although Quebec has always met this requirement it stopped doing so when Bill 22 was adopted. It flaunts it openly with the provisions of Bill 1.

X INTERNATIONAL PRACTISE

Contrary to a myth which has been circulated by certain elements in the Government, to the effect that, "A normal country has one language, one school system," and that "language and minority rights are a nominal concept which does not exist anywhere else in the world", there are many countries in different parts of the world which give lie to such a false and misleading proposition.

The basic human right that a child should receive his or her education in his or her mother tongue is recognized internationally. It is practised by many bilingual countries of the Western World and even in the Far East. Belgium, the Netherlands, Ireland, South Africa and Hong Kong all provide, in different ways, public education in their own language for major linguistic groups.

Indeed, even in countries such as Yugoslavia, the right of complete equality is recognized toward five different minority groups. The principle of complete equality, not only with regard to educational matters, but in all matters relating to the public services is written into the constitution.

Perhaps the world's best example is that of Switzerland where the groupings into four national languages are each protected and respected in their constitution, and where each enjoys far reaching autonomy. The underlying principles written into the Swiss constitution are respect for the uniqueness of individuality of persons with different cultural backgrounds and the spirit of tolerance that comes out in tact with fellow countrymen.

Perhaps if the Government appointed a Commission to carry out a survey of the countries referred to above, and others, where the basic human right principle to be educated in one's mother tongue is recognized internationally, it would conclude that respect for minorities means that it is not merely the numerical strength of a group that is decisive; with

the individual being placed at a disadvantage merely because he is a member of a minority group -- which Bill 1 proposes to do. It would indeed discover that Bill 1 represents a GIANT STEP BACKWARDS in the field of human rights.

XI CONCLUSION

In conclusion, it is our opinion that over the past decade there has been a positive change in attitude toward the "French Fact", and that given time, the vigour, vitality, use and application of the French language in all segments of society will manifest itself --- the present momentum of the language virtually guarantees this.

As it is now constituted, Bill 1 is simultaneously coercive, restrictive, discriminatory, in many instances unconstitutional, and dangerous, in that it permits dictatorial decisions affecting the lives of all Quebecers, regardless of their mother tongue. We know of no Province in Canada where in the last quarter of the 20th century repressive and discriminatory legislation against a minority language and culture either exists or is being contemplated, as it is in Quebec through Bill 1.

The implementation of Bill 1 will undermine the positive progress that the French language has already achieved in the past decade. At the same time it will develop a majority underprivileged unilingual bloc - French-speaking only - with a small bilingual elitist leadership.

Bill 1 not only fails to provide for the cultural survival and renewal of the English-speaking minority which has for the past two hundred years been a significant part of, and made a significant contribution to, the province of Quebec. It erodes these minority rights and in so doing ensures the gradual demise and destruction of the English presence in Quebec.

Our final conclusion is that if a language bill is deemed necessary, such legislation should recognize and protect both the French and English language communities of Quebec. A language bill that does not recognize this fundamental principle can only work to the detriment of all Quebecers. Bill 1 in our opinion, should be unacceptable to all, as it is unacceptable to the Quebec Federation of Home and School Associations.