

No federal initiation of challenge to Quebec's language law

At a press conference in Ottawa on October 6, the Prime Minister said the Federal Government would not initiate a constitutional challenge to Bill 101, Quebec's language legislation (see *Canada Weekly* dated July 27 and July 6, 1977). The Government would, however, intervene to support legal challenges brought against the bill by individuals or groups in Quebec.

Mr. Trudeau explained the reasons for the decision and outlined the contents of a letter he had sent to Quebec Premier René Lévesque, dated October 6, in which he suggested that the Quebec provincial government reconsider its rejection of the Federal Government's proposal for a constitutional amendment to guaranty minority language rights across Canada.

The following excerpts are from a Federal Government position paper regarding Bill 101, "The Charter of the French Language", issued at the press conference:

Bill 101 is of concern to the Federal Government because it will adversely affect: (a) the unity of Canada and the development of equal rights for the two official languages; (b) the fundamental rights and freedoms of Canadians; (c) the security and development of official language minority communities throughout the country; and (d) the prosperity of Quebec.

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...The Federal Government believes that collaboration rather than confrontation would secure the linguistic aspirations of Quebecers without eroding the economic health of the province.

More specifically, the Federal Government totally opposes those provisions of Bill 101 which:

- (a) deny the equal official status of French and English in that part of Canada formed by Quebec;
- (b) deny the equal status of French and English in legislation and in the courts;
- (c) deprive all Quebecers, except certain *anglophones*, of the right to choose freely the language of education of their children;
- (d) forbid English-speaking Canadians coming to settle in Quebec entry to English schools;
- (e) deny any guarantee that, in the future, public and para-public services will be offered in English as well as French; and
- (f) adversely affect the vitality of business and industry in Quebec and the development of a sound economy in that province.

Conclusions

Based on a close examination of Bill 101, the Federal Government has concluded that:



Mr. Trudeau addresses news conference.

- (a) a few provisions of the law are of doubtful constitutional validity, while certain other provisions might be found to be unconstitutional depending upon their application in practice;
- (b) the constitutionality of a provincial law should normally be tested initially before the provincial courts so that when a case comes before the Supreme Court for final determination, that Court will have the benefit of the considered judgments of the provincial courts on the interpretation of a provincial law; and
- (c) the procedure for a reference under the Supreme Court Act should normally be confined to cases where the Court has before it a substantial factual framework within which to adjudicate the issues. Otherwise the Court is placed in the difficult position of having to render an opinion in the abstract, without the benefit of concrete facts to which it may apply the law. The issues raised by the Charter are extremely numerous and com-

plex, and consequently a well-reasoned final judgment can only properly emerge in the course of ordinary litigation before the lower courts.

Therefore, the Federal Government: (a) has concluded that it would not be appropriate in the present circumstances to refer the Quebec legislation directly to the Supreme Court for a determination of its constitutional validity; and (b) will intervene and state its case in any appropriate action commenced by an individual or a group in Quebec contesting one or more provisions of Bill 101 on constitutional grounds, or take such other legal action as the circumstances of a particular case may dictate, if and when such cases arise. In this regard, the Federal Government will be appearing in the recent case commenced in the Superior Court in Montreal to present arguments contesting the constitutional validity of those provisions of the bill respecting the language of the legislature and the courts.

Political rather than legal action

Bill 101 is now a provincial law. The Federal Government believes that political rather than legal initiatives are more appropriate in the circumstances and that the repressive provisions of the bill should be abolished through the democratic process....

...The Federal Government has proposed to all the provinces that by an amendment to the Constitution they entrench the right of all Canadian parents to choose, where numbers warrant, the official language in which their children will be educated. It has suggested an "opting in" procedure which would permit individual provinces to accept such a constitutional amendment before others were ready or able to do so. This "opting in" procedure was first suggested in relation to entrenched language rights in the Victoria Charter of 1971. While the Federal Government then considered such a procedure less desirable than the immediate entrenchment of those rights, it accepted the idea in recognition of the fact that only thus would progress be made. The Federal Government again recognizes that such a procedure in the present context would be less desirable than immediate entrenchment by all provinces. The suggestion in no way endorses the relevant sections of Bill 101. The Federal Government is prepared to discuss this proposal with any interested provincial government.

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