

First of all, I should like to make a general comment to put this submission in perspective. As a constitutional professor I cannot resist the temptation of enlightening honourable senators a little on what a constitution is all about. A constitution provides the ground rules in the exercise of the collective power of the people that is delegated to governments.

In relation to the Meech Lake Accord, there are three important realities that people have to understand: the first is that the majority of the people, being represented in government, do not need the protection of the Constitution, generally. The majority has a sociological protection, and very often it does not need a constitutional protection.

Second, the Constitution, at its best, works when the morals and the wisdom of the people break down. It is intended to help channel the emotions of hysteria and panic. That is the reason constitutions work better when there is bad government, arbitrary government or other authoritarianism. The wise restraints that make men free are almost always better than written words.

The third point that is important to realize is that the Constitution is very simply an empty declaration unless we have courageous, wise and objective judges. An eminent Justice of the United States Supreme Court, Oliver Wendell Holmes, once said that the Constitution is what the judges say.

Out of these three points arise the concerns of the Canadian Ethnocultural Council. There is no constitutional protection today of the ethnic culture in Canada. Section 27 of the Canadian Charter of Rights and Freedoms is very simply a direction as to how the courts should interpret the Constitution; it is not a substantive grant of any right to the ethnic minorities in Canada.

Section 2 of the Meech Lake Accord recognizes the French culture and the English culture, the two mainstream cultures in Canada today. Being the majority culture they do not need the constitutional protection that is actually being put in the Charter. They have the strength of numbers, and that is the reason constitutions, in the ultimate analysis, are not needed. The sociological protection is enough. What a constitution must require is the protection of the ethnic cultural minorities, and that is exactly what is missing in the Meech Lake Accord.

Aside from that, section 2 of the Meech Lake Accord has given a window that can serve as a justification to bigoted courts or bigoted governments to limit the Canadian Charter of Rights and Freedoms.

By being specific in relation to the English and the French cultures, one—especially the courts—can imply that the Constitution does not recognize any other cultures, because otherwise what is the purpose of being specific? That is a kind of distorted logic that, even in the hands of the courts or the government, could become a weapon to limit the multicultural character of the country—or probably even the liberties that are included in the Canadian Charter of Rights and Freedoms.

If, indeed, multiculturalism is protected by the Charter, why be very specific in the protection and preservation of the English and the French cultures? It is more dangerous to leave

the ethnic or minority cultures naked of constitutional protection.

Section 2 can be taken as a fresh and original grant of a power that did not previously exist in the Constitution Act of 1867. In the hands of the wrong government that can be taken, as I said, to justify the limitations of liberty in the country, in the name, very often mistakenly, of the survival of one culture or for the purity of another culture.

The multicultural character of the country is not inconsistent with the recognition of the English and French culture in Canada. For that reason there is no reason to fear that an amendment to section 2, stating that one of the fundamental characters of Canada is multiculturalism, would be a dangerous proposition.

The next point relates to the vagueness of the concepts that are included in the Meech Lake Accord. Vague terms are dangerous to liberty, because they enlarge the ability of those who make decisions to justify certain kinds of interpretation that could limit the liberty of the people. The definitions of what are a distinctive characteristic of Canada and a distinct society in Quebec require an invitation for clarity, and if they are not clarified they can be distorted beyond the intent of the Fathers of the Constitution during the Meech Lake Accord, because in the ultimate analysis the judge's ability to make an oppressive decision plausible, to make it sound plausible under the words of the Constitution, is the true limit of constitutional interpretation. That is the reason why there should be certain clarity in the definitions of those two terms.

• (1510)

Finally—and this touches directly on the objectivity, wisdom and need for judges who have the courage to protect minority cultures—judges, as I have said before, are the ultimate interpreters of the Constitution. We believe, as is proven by sociological studies, that there is a cultural bias to wisdom, education and philosophy that is demonstrated in the interpretation of the United States Constitution. For that reason, in our view, judges across the country should have ethnic representations so that they will fully understand the psychological thinking and the emotion of the ethnocultural minorities in this country.

Moreover, the granting of the powers to the provinces to nominate Supreme Court Judges dilutes their accountability and destroys the unified responsibility for multiculturalism throughout the country.

For these reasons, honourable senators and Mr. Chairman, we support, and suggest to you that you should seriously consider, amending particularly section 2 of the Meech Lake Accord.

**The Chairman:** Thank you Mr. Binavince. Mr. Corn?

**Mr. Corn:** I should like to mention a few things from the report of the Special Joint Committee of the Senate and House of Commons.

Section 93 of that report states:

A number of representatives of Canadian ethnocultural organizations dedicated to the preservation and promotion