

10. Your Committee agrees with the suggestion of the leadership of the aboriginal groups and recommends that a Companion Resolution should provide for a separate process of constitutional conferences every three years. The first such conference should be convened no later than one year after such a Resolution comes into force.

A concern addressed in the New Brunswick Companion Resolution in relation to section 16 of the Meech Lake Accord is to the effect that the Charter is overridden by the distinct society clause. This concern has been expressed by representatives of women's groups and other equality seekers.

There is a debate about the impact of the distinct society clause on the interpretation of the *Canadian Charter of Rights and Freedoms*. The thrust of expert legal testimony would suggest that the issue is more a matter of perception. For example a legal and constitutional expert, Roger Tassé QC, Deputy Minister of Justice under a Liberal administration when the Charter was adopted and, later, in his then capacity as legal advisor to the present government, was present at discussions at the Langevin Building. He has testified:

"This is because the distinct society clause, like the Canadian duality clause which is an integral part of it, is an interpretive clause which does not in any way change the dynamics of the Charter of Rights and the protection it guarantees. Within the framework of the Charter, the only scope of this clause is to implement section 1. You will recall that this section stipulates that the rights and freedoms guaranteed by the Charter are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. This extremely rigorous test was made even stricter by subsequent rulings of the Supreme Court.

No one has ever seriously claimed that the rights and freedoms guaranteed by the Charter are absolute. Section 1 stipulates the conditions under which they can be restricted. I ask you, on what principle should the special situation of francophone as a minority group in Canada, in North America, be excluded from the scope of section 1? Our courts including the Supreme Court of Canada in the notorious sign law case, had already agreed to take that situation into account even before the Meech Lake Accord was passed.

The rights and freedoms guaranteed by the Charter are in no way compromised by the distinct society clause and, in my opinion, the adoption of this clause would only confirm that the distinct society of Quebec is a legitimate fact that should be taken into consideration in applying section 1".

Some First Ministers are themselves on the record on this point. In the interpretation of our Constitution, courts give weight to such statements of intention.