

THE CONSTITUTION

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STATEMENT DISCOURS

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NOTES FOR AN ADDRESS

BY THE

MINISTER FOR EXTERNAL RELATIONS,

THE HONOURABLE PIERRE DE BANÉ,

TO THE ST. NICHOLAS MEN'S CLUB

MONTREAL,

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AND THE RIGHTS OF MINORITIES

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The Constitution and its patriation stimulated great debate. That debate is now over but we are pursuing continued discussions on its meaning and application. I welcome this for it is important that there be full discussion on this document and that we all contribute to its growth and development. Patriation was essentially a mechanical process and as Canadians we have a responsibility to continue to shape this document to best suit our needs. I feel certain you have a keen interest in this process and I hope a desire to participate.

The theme chosen for today narrows in on the rights of minorities. Throughout the debate on the Constitution there was much interest and attention focussed on this particular aspect.

It is not so narrow a theme as might be imagined. My colleagues on both sides of the House were capable of giving it very broad attention. I hope you don't expect me to list all the possible minorities - it might be rather like reciting the telephone book, so diverse and numerous are the possibilities.

But a few examples might illustrate this - linguistic, ethnic, national or racial are some broadly defined minorities. Physically handicapped or physically gifted are other categories. Religious or social minorities can be identified, as can economic or cultural.

Within each of these broad categories are subgroups of other minorities - and then there are cross cultural or combinations of minorities which form other groupings within the matrix. It is, when you come down to it, the very fabric of the patchwork quilt, an expression which has been used to describe this great nation.

As a modest caveat to this fragmented description of Canada, I would urge you and all Canadians to think first and foremost of a united Canada, a prosperous Canada made that way by all Canadians whatever their colour, religion, language or national background. I would urge you to look on the Constitution as safeguarding the rights and privileges of all of us as Canadians not as units or elements separate unto ourselves. We sometimes lose sight of the whole by focussing too closely or intently on details.

There is no question that the Constitution is an important document. It has been subjected to intensive debate throughout the nation and the government was listening. My colleague, the Minister of Justice, emphasized this when, in January, he tabled amendments for the Charter of Rights. He said:

"I have studied with great care both the written briefs and the oral testimony...and I have taken into account the points which have been made by all members of this committee (Special Joint Committee of the House of Commons and Senate). The government has listened to the views of Canadians."

With those words, he tabled a number of significant amendments which were subsequently adopted.

The Constitution and Charter of Rights, what does it do? It protects fundamental freedoms common to all Canadians - such as freedom of speech, of religion, of the press, and the freedom to vote and to hold office.

These are for all Canadians, not one minority here or there, but for all minorities. They are not insignificant.

The Charter guarantees the freedom of Canadians to establish residence and seek employment anywhere in Canada, without regard to provincial borders. It also recognizes the need for special measures to be taken to protect local residents in provinces whose rate of employment is below the national average. A minority group of another sort, and one not normally thought of in terms of minority rights.

Legal rights of Canadians are guaranteed by the Charter. It is comforting to think that the majority of Canadians rarely are on the wrong side of the law, but it is equally comforting to know one's personal rights are well protected through the Constitution and not subject to legislative vagaries or local custom. Protection from arbitrary arrest and against unreasonable search and seizures are essential elements of the Charter, as is the enumeration of the rights of an accused to be defended by counsel, to have a fair trial and not to be forced to testify against oneself.

Of no little importance to our audience tonight are the measures to ensure the equality of women before and under the law.

The Charter specifically addresses and prohibits discrimination against those with physical or mental disabilities. If I may make a parenthetical observation this was a timely statement for the world, to be able to include this in our national Constitution during the International Year of the Disabled.

I opened my remarks by referring to the multiple kinds and categories of minorities making up Canada. You, my friends, give considerable proof to the multicultural composition of this country - and I hope you share my pride that this has been enshrined in the Constitution in the words: The Charter "shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians".

This is not a matter of preserving folkdances and international cuisine. It is a philosophical recognition of the universality and dignity of man, and a practical recognition that Canada is a commonwealth of more than 70 cultures. Multiculturalism is a strength of Canada and its impact is felt everywhere. The diversity of ideas exchanged in the universities as in the marketplaces among Canadians who have come here, have chosen Canada as their home, is exciting and rewarding.

Many of you are in business, and I'm sure involved in export or import activities. You are very important elements of the Canadian economy because of your skills and particular knowledge of languages and customs of other lands. Dealing in foreign markets requires these basic abilities. But it also calls for new kinds of corporate managers, flexible cosmopolitans, aware of cultural sensitivities and foreign practices. Entrepreneurs who cut costs through knowledge of the cultural effects on behaviour, the motivation of workers in other lands, or the interpretation of contracts and documents.

The preservation of multiculturalism in the Constitution is good for the so-called minorities, but it is also good for the whole of Canada. It gives all the opportunity to compete on equal footings, to bring into play unique talents and abilities. The freedoms of speech and free association are clearly elements preserving and enhancing multiculturalism.

The Constitution seeks to protect minority language rights. Of no small import has been the treatment given Canada's two official languages, and the guarantee of minority language education rights. These are fundamental aspects, underpinning such previously mentioned freedoms as personal mobility anywhere in Canada and taking employment or establishing residence in any of the ten provinces or the territories. As a Quebecker and as a Canadian I rejoice in these vitally important elements, for they represent to me a true affirmation of one nation, Canada.

I regret deeply, however, that the government of my province has chosen to spurn this Constitution, to make a mockery of the efforts of Prime Minister Trudeau and the leaders of the other provinces. Of course, you know I refer to another of those bills of the National Assembly, Bill 62 the "Override Bill." This simple legislation simply shows the limited vision of M. Lévesque and his colleagues.

I can only repeat to you tonight, and to all Quebeckers, that the Canadian charter is for the common good of all the Canadian people. Whether you live in Tuktoyaktuk, Kamloops, Lachine, or the Annapolis Valley, the preservation of your rights and freedoms is in this Constitution and Charter of Rights.

It is specious for the Parti Quebecois to argue that it is a "foreign legal framework" and that Bill 62 saves the legislative powers of the National Assembly from some unknown danger inherent in that framework. There is no special clause in the Constitution for Quebec legislature no more than for any other legislature.

But there is a special clause in Bill 62 that permits the National Assembly to override any of the "Judicial Rights" in the Quebec Charter. Rather a case of "Now you have it - and now you don't!" And there is the power to adopt laws which are discriminatory or create inequalities.

I must be candid with you - there is an override clause in the Canadian Charter, Section 33. It enables a legislature to enact a particular law overriding a particular right specified in the Charter. It presupposes very careful consideration and that action will be in the best interests of the people. What you must note is that Section 33 is for exceptional circumstances. Any declaration made under it must be reviewed and re-enacted within five years or it cannot remain in force.

Quebeckers ought not willingly tolerate this mockery of their adherence to fundamental values of freedom and human rights. There is time, and there is a means, a means which in itself upholds democratic traditions. Bill 62 can be challenged - in the courts and at the ballot box.

The Prime Minister last month affirmed that the Constitution must be obeyed, obeyed by the citizens and the governments of Canada. He said "...if in any case, a government, federal or provincial, does not obey that Constitution, it can be taken to court by any citizen who loses his protection by the action of that government".

You may recall that he went on to say that a principle has been established whereby the federal government may provide funds to assist citizens undertaking such appeals. It is not a blanket undertaking for every constitutional case that may be raised. Consideration would examine whether justice would fail to be done because the plaintiff did not have sufficient resources to pursue his own case.

What the Prime Minister has emphasized is that the Constitution must be obeyed. It is the law of the land. The courts must ensure it is obeyed, but of an even higher order, the people must see it is obeyed through their participation in the political process.

I think you will agree with me that it will be preferable if Canadians work together to make the Constitution a unifying force in our nation. I trust that in these few remarks tonight I have demonstrated that the personal rights and freedoms of individuals are respected and protected, and that we - diverse in origin or culture or language as we may be - that we Canadians are bonded into a common and dynamic society.