SECTION E

MISCELLANEOUS SUBMISSIONS TO THE COMMISSION
MISCELLANEOUS SUBMISSIONS TO THE COMMISSION

In the course of the public hearings of the Commission many submissions were made on matters quite beyond its terms of reference. Some of these concerned matters of policy clearly within the competence of the Dominion; others concerned matters within the competence of the province. On several occasions it was explained that by our terms of reference we were not concerned with public policy as such, but rather with Dominion-provincial relations, and that however strongly we might sympathize with submissions on matters beyond our terms of reference we could not make recommendations concerning them. But we think that it is expedient to mention certain of the submissions although our instructions debar us from discussing their merits.

Two briefs submitted to us in the Province of Quebec contended that the women of that Province should be allowed to vote in provincial elections. This is a question which lies entirely within the competence of the Legislature of the Province of Quebec.

Another contention, also made in Quebec, was that the French-speaking population in New Brunswick should have representation in the New Brunswick Legislature commensurate with, or proportional to, its numerical importance in that Province. This, too, is a question which lies entirely within the exclusive competence of the legislature of the province concerned.

A third contention concerns the position of the French language in provinces in which there is a substantial French-speaking minority. There are three aspects to this contention. The first concerns primary and secondary education, the second the use of French in the legislature and courts of the province and in governmental publications, the third the use of French in communications with the Federal Government or in business with the employees of that government. The general argument in the briefs was that section 133 of the British North America Act affirms and consecrates the bilingual character of the Dominion, and that the intent of this section has been reproduced in the Manitoba Act of 1870 and in the North-West Territories Act of 1877. All the briefs and submissions on this question claim that the British North America Act simply confirmed natural and historic rights, and they quote to this effect capitulations, treaties, statutes and speeches by many of the Fathers of Confederation. These briefs contend that no narrow interpretation should be given to section 133, but that it should be read in the wide sense which it is alleged that the Fathers of Confederation, to judge by their words, intended that it should convey. The particular complaints are: that French is not an official language outside of the Province of Quebec except in the field of the Federal Government and in federal courts; that French-Canadians and Acadians do not have a share in the civil service of Canada commensurate with their numbers; that many of the federal civil servants with whom the French-speaking part of the population must deal do not understand French, still less speak or write it; that in certain parts of the country, outside of Quebec, there are no programs in French over the Canadian Broadcasting Corporation’s network; that in the schools, outside of Quebec, there is practically no instruction conducted in French, even though English could be better taught to French-speaking children through French. It is contended that it is one of the natural rights of a father to have his children educated in the language of the parents. French-

---

1 E.g. Ex. 292, Brief of Alberta Co-operative Sugar Beet Growers Ass’n which urged among other things special freight rates for the assistance of western sugar beet growers.
2 E.g. Ex. 29, Brief of Catholic Minority of Manitoba.
3 E.g. Exs. 299-300 (Dominion-Provincial Relations).
4 Ex. 342, La Ligue des droits de la femme, and Ex. 340, Alliance canadienne pour le vote des femmes de Québec.
5 Ex. 352, Mémoire des Acadiens et des Canadien-français des provinces Maritimes.
6 Ex. 351, Comité permanent des Congrès de la langue française; Ex. 352, Les Acadiens et des Canadien-français des provinces Maritimes; Ex. 353, Les Canadien-français du Manitoba; Ex. 354, Les Canadien-français de la Saskatchewan; Ex. 355, Les Canadien-français de l’Alberta; Ex. 29, Catholic Minority of Manitoba; Ex. 344, La Société Saint-Jean-Baptiste de Montréal, which was endorsed and approved by La Société Saint-Jean-Baptiste des Trois-Rivières, L’Association générale des étudiants de l’Université de Montréal, Les Chevaliers de Carillon, Association Canado-Américaine, Les Patriotes de Rosemont, Association des bûcherons de la campagne de la province de Québec, L’Union des vétérans canadiens. Opposition to the views set out in these briefs was expressed in Ex. 355, Brief of Grand Orange Lodge of Ont. West.
7 Section 23.
8 Section 11.
9 An extended discussion is to be found in Ex. 344, La Société Saint-Jean-Baptiste de Montréal.
10 For a discussion of the difficulty of interpreting the B.N.A. Act in accordance with the intentions of the Fathers of Confederation, see Book I, chapter entitled “The Nature of Confederation”.
11 This argument is developed at length in Ex. 385, Brief of Les Canadien-français de l’Alberta.
Canadians and Acadians refuse to have their status compared with that of immigrant minorities, and resent such a comparison, for they were the discoverers and first settlers of the country and claim that anywhere in Canada they are in their motherland. No one, we think, will deny the importance of the part played by Canadians of French origin in exploring, pioneering and settling Canada. Nor will anyone, we think, dispute the desirability of supplementing English and French culture and vice versa whenever it is practicable to do so. In the field of secondary and higher education particularly there is little danger of the cultural value of either of the two great languages of Canada being underrated in provinces in which the other is the language of the majority. We may call attention to a brief presented to this Commission by the Youth Council of Greater Vancouver\textsuperscript{12} in which it was suggested that every normal boy and girl in Canada should learn both languages. Considerations of sentiment reinforce this suggestion that the language of each of the two races which have pioneered the North American continent should be part of the cultural heritage of both.

But the education of the young is, as we emphasize elsewhere,\textsuperscript{13} one of those cultural matters over which each province enjoys under the British North America Act almost exclusive control. In the primary education of children likely to leave school at a very early age the question of language instruction presents peculiar difficulties. Our contribution toward meeting them, while indirect, is not unimportant. We have endeavoured to frame recommendations which, if implemented, would place every province in a position in which its treatment of primary education and of the school-leaving age need not be dominated by the considerations of rigid and almost ruthless economy which have in some instances undermined the basis of our educational system. In the same way the use of both languages in public business is a matter in which, subject of course to existing constitutional provisions, the legislature of the province concerned has exclusive jurisdiction. And the federal policy in this matter must, subject to the same limitations, be determined by the Parliament of Canada. Thus, while we sympathize with the persistence of the French Canadians and Acadians in holding to their language and their culture, and while we are far from wishing to minimize the importance of this question, we see in the order in council which defines our duties no justification for undertaking a detailed study of the question or for making recommendations in connection with it.

A fourth contention, which has received widespread support throughout Canada, is that constitutional safeguards should be provided to protect the fundamental political rights and liberties of citizens of Canada against any possible infringement by provincial legislation.\textsuperscript{14} There are many ways in which such protection might have been given. A "Bill of Rights" might have been added to the British North America Act, so worded as to define the rights to be protected and to invalidate any legislation purporting to infringe them. But the difficulty of defining rights in the constitution, of enforcing their protection, and of preventing a "Bill of Rights" from being a barrier to social progress, is evident from the experience of the United States. Or, a second method might have been to vest in the Parliament of Canada an express power to define and protect these rights although some provinces would have probably objected to giving such powers to the Federal Parliament. This device would probably not have given to Parliament any wider powers that it now enjoys under other heads, but it would have operated to deprive provincial legislatures of power to infringe these rights. This device would, however, have involved the difficulty of defining precisely the rights to be protected. A third device would have been to define authoritatively the circumstances under which the power of disallowance should be exercised by the Government of Canada, including under these circumstances the invasion of the rights and liberties of the citizens of Canada.

The Fathers of Confederation apparently preferred to trust to the good sense, fair-mindedness and traditional constitutionalism of the majorities in each part of the Dominion for the practical protection of such rights, rather than to attempt to set up any artificial control which would have implied anxieties and a lack of mutual confidence really contrary to the ideals with which they were then impressed.

Whether or not Canadian experience since Confederation shows that some artificial control is now required in that regard instead of the original trust and confidence, is a question with respect to which

\textsuperscript{12} Ex. 205.
\textsuperscript{13} See p. 30ff.
\textsuperscript{14} See Ex. 17, Winnipeg Board of Trade; Ex. 33, Native Sons of Canada; Ex. 106, Trades and Labor Congress; Ex. 239, Edmonton Chamber of Commerce; Ex. 249, Calgary Board of Trade; Ex. 243, Alberta Youth Congress; Ex. 92, Canadian Life Insurance Officers Ass'n; Ex. 255, United Farmers of Alberta; Ex. 207, Native Sons of B.C.; Ex. 345, La Ligue des droits de la femme; Ex. 396, Canadian Legion; Ex. 401, Communist Party.
our practical conclusion must be much the same as that reached in our discussion of the submissions concerning the position of the French language.

A fifth matter to which considerable argument was addressed before the Commission was that of provision for amending the British North America Act without resort to the Imperial Parliament. The Province of Nova Scotia in particular stressed the need for devising procedure to this end, and this contention was in general supported by the Provinces of Saskatchewan, Manitoba and British Columbia. The Provinces of Nova Scotia and Saskatchewan contended that the consent of every province should not be required to an amendment, except in matters involving minority rights. On the other hand, the Government of Quebec contended that the British North America Act embodied an agreement between the provinces, and as such was not amendable except by the consent of all provinces. New Brunswick's submission was based in part on a similar contention. Important as is this question from the point of view of Dominion-provincial relations, we feel that it falls outside our terms of reference which are confined in the main to the economic and financial aspects of the federal system. While some of our recommendations will if implemented involve specific amendment of the British North America Act, the procedure whereby these amendments should be brought about is a matter for the governments and legislatures concerned, rather than for this Commission.

Another constitutional matter submitted to us was that of the implementation of treaties. It was contended that a recent decision of the Judicial Committee of the Privy Council had the effect of limiting the power of the Dominion Parliament to implement treaties under section 132 of the British North America Act to those treaties negotiated by the King on the advice of his United Kingdom ministers, and that for treaties made by the King on the advice of his Canadian ministers, or conventions made by the Canadian Government, on any matter within the legislative jurisdiction of the provinces the Dominion Parliament had no power of implementation. It was contended that this made it extremely difficult, if not impossible, for Canada to perform its international obligations. It was further urged that the normal method of implementing treaties in a federal state was by the central rather than the state or provincial authorities.

But, except for conventions of the International Labour Organization (which are intimately related to jurisdiction in labour legislation), the Commission felt that the problem of implementing treaties, however important in Dominion-provincial relations or in relation to the status of Canada as a member of the family of nations, fell outside its terms of reference.

---

17 Ev. (Saska.), pp. 1221, 2277; Ev. (N.S.), pp. 3870-71.
19 For an extended discussion see Ex. 100, Brief of League of Nations Society. See also Ex. 106, Brief of Trades and Labor Congress; Ex. 359, Brief of Canadian Legion; Ex. 89, Brief of League for Social Reconstruction; Ex. 257, Brief of Alberta C.C.F. Clubs; Ex. 205, Brief of Greater Vancouver Youth Council; Ex. 209, Brief of Young Liberal As'n (B.C. Section); Ex. 28, Brief of Greater Winnipeg Youth Council; Brief of Man. Pt. II, pp. 28-27; Brief of Saska., p. 334.
20 See p. 48.