

CQM-CMQ

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The Council of Quebec Minorities

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JOINT BRIEF SUBMITTED BY L'ASSOCIATION
CANADIENNE-FRANÇAISE DE L'ONTARIO (ACFO)
AND BY THE COUNCIL OF QUEBEC MINORITIES

TO

THE SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS ON THE CONSTITUTION
OF CANADA

NOVEMBER 18, 1980

OTTAWA

Introduction

Canada is our country. This is the fundamental belief held by the signatories to this brief. We wish to ensure that the fundamental rights of Canadians are recognized so that Canadians will feel at home throughout Canada and will have access to all parts of this great country.

The Association canadienne-française de l'Ontario (ACFO) and the Council of Quebec Minorities (CQM) have deemed it appropriate to join together to present to the members of the Special Joint Committee of Parliament on the Constitution of Canada, a number of comments on the draft Resolution which would amend the Constitution of Canada.

We have joined together for this purpose because we believe that French and English speaking Canadians can live and work together. We believe that we can build the Canada of the future together. Our presence here bears witness to this.

ACFO was founded in 1910, and comprises eighteen regional councils and seventeen affiliated provincial associations; its purpose is to promote the interests of Franco-Ontarians in various fields of endeavour. The Council of Quebec Minorities was created in 1978; it includes forty-two associations, and concerns itself with the interests of individuals and groups involved in minority life throughout Quebec.

Language rights

In stating their claims, the French speaking people of Ontario have long sought to obtain in their province, rights and services equal to those which are enjoyed by the English speaking minority in Quebec, in order to secure their survival and development. The awakening of English-speaking Quebecers is more recent and has focused on the need to maintain rights and services which are considered essential to the development of their community.

ACFO and CQM have come together in order to share with you certain recommendations regarding language rights and human rights based on the experiences we have lived.

At a time when constitutional reform is being considered, we feel that Canadians must declare the basic principles upon which the Canada of the future is to be built. Some of these principles touch the issue of basic language rights and services.

In this regard we submit certain comments as to the rights proposed in the draft Resolution. The section dealing with language rights in the Federal Government's draft for a Canadian charter of rights and freedoms presented at the Constitutional Conference in September, 1980, better reflects our aspirations than the draft resolution now before Parliament. Indeed, the September 1980 proposal would better guarantee the language rights of English and French speaking minorities on provincial and federal levels.

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We therefore urge that the draft Resolution be modified in such a way that the language rights of the French- and English-speaking peoples of Canada be ensured, both at the provincial and federal levels. To this end we propose the following:-

1. EITHER THE ENGLISH OR THE FRENCH LANGUAGE MAY BE USED BY ANY PERSON IN THE DEBATES OF EITHER HOUSE OF THE PARLIAMENT OF CANADA OR OF THE LEGISLATURE OF ANY PROVINCE.

We believe that a representative elected by the Canadian people to sit in the Legislature of a province must have the right to express himself in the Official language of his choice.

If French and English are to be accepted as truly Canadian languages, it is essential that elected representatives be entitled to use either language before the Federal Parliament or any provincial Legislature. Some may argue that such rights would be in some cases merely symbolic. In reply we would contend that such a symbol is of vital importance.

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2. SECTION 133 OF THE BNA ACT MUST AT LEAST APPLY TO THE PROVINCES OF ONTARIO, NEW BRUNSWICK, MANITOBA AND QUEBEC.

Section 133 of the BNA Act, for reasons of which we are all aware, has assumed a symbolic importance in the present debate which is perhaps even greater than its not inconsequential substantive importance. Yet, for all that, we are thoroughly convinced that this amendment would be one of the least controversial.

To begin with, the number of French-speaking people in Ontario (500,000) as well as the number and proportion of French-speaking people in New Brunswick, clearly justifies recognition of equal status for French and English in the legislatures and courts of law of these provinces.

Secondly, while Quebec and Manitoba are presently subject to the terms of Section 133 (Section 23 of the Manitoba Act), for all practical purposes New Brunswick has already enacted provincial legislation granting its French-speaking citizens equivalent rights. In addition, Premier Hatfield has clearly indicated a ready willingness for his province to join Quebec and Manitoba in furnishing to its citizens a constitutional safeguard in this respect. That leaves only Ontario to be dealt with.

Great strides have been made in the 1970's in Ontario in granting French-language services to its citizens and this process is continuing. And, it has been the declared intention of the present administration officially to adopt bilingualism once those services had in fact attained a level justifying that step. The parties in opposition appear ready to take the leap immediately. Consequently, all agree in principle that the bilingual services required by Section 133 are desirable and should apply to Ontario - the disagreement applies only to its date of implementation. Why not then provide for a reasonable delay in the case of Ontario for the implementation of the principle? This solution has the virtue of clearly declaring the principles that will govern the country while at the same time meeting the practical consideration affecting implementation.

3. ANY ACTION INSTITUTED BY THE CROWN, AGAINST AN INDIVIDUAL, THAT MAY LEAD TO IMPRISONMENT MAY BE TRIED IN EITHER ENGLISH OR FRENCH AT THE CHOICE OF THE INDIVIDUAL.

Whenever a person is charged before a Court, our legal and cultural traditions demand that he be given every opportunity to defend himself effectively. When the very liberty of the individual is at issue we feel that the State must allow the individual to be tried in his Official language.

4. SECTION 20 OF THE DRAFT RESOLUTION DEALING WITH THE USE OF THE OFFICIAL LANGUAGES TO COMMUNICATE WITH AND RECEIVE THE SERVICES OF THE FEDERAL GOVERNMENT MUST ALSO APPLY TO THE GOVERNMENTS OF ALL OF THE PROVINCES.

Indeed, the widening of government powers and the resulting additional contact with the public make this right increasingly necessary.

Right to education in the minority language

No right is more critical to the survival of the Official linguistic minorities and to the recognition that French and English are Canadian languages, than the right of parents to educate their children in such languages.

Right to education in the minority language (Cont'd)

We therefore believe that such a right should be entrenched in the Constitution.

We would not restrict this right to Canadian citizens. The distinction between the rights of citizens and those of permanent residents is offensive and unnecessary. Similarly, weakening the principle by adding a "where numbers warrant clause," represents an unnecessary qualification of a fundamental principle. Modern technology renders such restriction unnecessary.

We would extend this right beyond primary and secondary instruction to collegial education. Collegial education, entirely supported and operated by the province, is a basic element in the process of preparing young people to enter the work force in both Quebec and Ontario. The systems are similar but not exactly the same. One common factor is that graduates of collegial institutions in both provinces can compete more effectively for jobs. It must be a right of both English speaking and French speaking residents to have access to what has become a basic element in our educational system.

Consequently we would propose that Article 23 of the draft Resolution be amended as follows: -

5.(1) ANY CITIZEN OR PERMANENT RESIDENT OF CANADA WHOSE FIRST LANGUAGE LEARNED AND STILL UNDERSTOOD IS THAT OF THE MINORITY LANGUAGE OF HIS PROVINCE OF RESIDENCE, HAS THE RIGHT TO HAVE HIS CHILDREN EDUCATED IN PUBLIC PRIMARY, SECONDARY AND COLLEGIAL INSTITUTIONS IN THE MINORITY LANGUAGE OF THAT PROVINCE.

(2)

THAT CANADIAN CITIZENS OR PERMANENT RESIDENTS OF CANADA WHO CHANGE THEIR RESIDENCE FROM ONE PROVINCE TO ANOTHER HAVE THE RIGHT TO EDUCATE THEIR CHILDREN, IN THE NEW PROVINCE OF RESIDENCE, AT THE PRIMARY, SECONDARY AND COLLECIAL LEVELS, IN THE LANGUAGE (ENGLISH AND FRENCH) IN WHICH ONE OF THE CHILDREN WAS EDUCATED IN THE FORMER PROVINCE OF RESIDENCE.

ADMINISTRATION OF SCHOOL BOARDS

6. ENGLISH AND FRENCH-SPEAKING MINORITIES MUST HAVE
THE RIGHT TO ADMINISTER THEIR OWN EDUCATIONAL INSTITUTIONS.

The history of French-language education in Ontario has demonstrated the necessity of equipping minorities with their own school boards administered by members of the minority group and elected by and from amongst the minority. In Quebec, roughly half of the English school system has to a considerable extent been controlled by the community it serves.

Section 93 of the BNA Act gave the right to administer their own schools in Quebec to Protestants, who were historically English-speaking. However, the English-speaking Roman Catholic population has been in a similar legal position to that of the Franco-Ontarians, although the English-speaking catholic population of Quebec has traditionally received more favourable treatment.

To further explain recent experience, reference may be made to the existing problems in Ontario. First, there is the brutal reality that Franco-Ontarians are not masters of their destiny in matters of education. In this respect, they are treated as wards - as if they were orphans and minors under the guidance of anglophone guardians. As such, the most they can accomplish is to be elected to a French Language Advisory Committee (FIAC). Yet, they still have no deciding voice. This situation must be rectified immediately.

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Second, the persons who have sat on FLACs have acquired considerable experience in school administration. Many of these members are indeed qualified and willing to become school trustees. The transitional role fulfilled by the FLACs should be terminated in all regions where Franco-Ontarians request the right to administer their own school boards, beginning with the Ottawa-Carleton region. These committees would be replaced by French-language school boards.

Third, democracy is based on the election of leaders by those directly affected. At present, however, it is the English-speaking majority that chooses school board representatives for the French-speaking minority of Ontario, and naturally it designates English-speaking people. While not denying their sincere desire to see justice done, unfortunately, these individuals often do not grasp the true aspirations, needs or priorities of Franco-Ontarians.

Solutions are available and the Quebec (Protestant) and New Brunswick models indicate that systems can be developed which create little difficulty or inconvenience to the majority.

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7. EVERY CANADIAN AND PERMANENT RESIDENT WHO WOULD OTHERWISE BE ADMISSABLE TO UNIVERSITY SHALL HAVE THE RIGHT TO RECEIVE HIS OR HER UNIVERSITY EDUCATION IN CANADA IN EITHER OFFICIAL LANGUAGE.

This right is essential if English-and French-speaking Canadians are to be on an equal footing throughout the Country. It would not require that every province provide University facilities in both languages. It would mean that French-language institutions and English-language institutions should be fostered and supported where they are viable. Furthermore provinces would have to extend their financial support of students who were forced to leave the province in order to find an appropriate course in their own language.

BROADCASTING

8. EVERY REGION OF THE COUNTRY MUST HAVE ACCESS TO RADIO AND TELEVISION BROADCASTING IN ENGLISH AND FRENCH.

The ability to participate fully in Canada requires access to the characteristic institutions of Canadian cultural life, information and mass communication. All Canadians should have the right to receive basic communications services in the official languages. Clearly, modern technology makes this goal attainable.

Moreover, the Canadian experience with minority language radio and television broadcasting has achieved a level across the country well beyond the merely developmental stages. Not that much therefore, in our opinion, remains to be done in order to realize this goal.

We must also never lose sight of the *raison d'être* of this process which the present government has undertaken. One of its principal purposes is to strengthen Canada by making it possible for members of the English-speaking and French-speaking linguistic communities to live comfortably in their own cultural milieu in all parts of this vast country.

Health and Social Services

9. ACCESS TO HEALTH AND SOCIAL SERVICES IN ENGLISH OR IN FRENCH MUST BE PROVIDED.

The nature of health and social services is such that, in many cases, a service to be effective must be delivered in the language of the recipient. Minority language communities should have available to them, services that are tuned to their needs. In order to properly serve the nature and needs of these communities these services must at least be delivered in the Official language of the user.

10. ENGLISH AND FRENCH-SPEAKING MINORITIES MUST HAVE THE RIGHT TO ADMINISTER THEIR OWN HEALTH AND SOCIAL SERVICES INSTITUTIONS, WHERE THE NUMBER OF PERSONS SPEAKING THE MINORITY LANGUAGE IS SUFFICIENT TO WARRANT THE ESTABLISHMENT OF THOSE INSTITUTIONS.

The character of an institution can greatly influence the kind of service it delivers. In the social services, cultural norms determine many of our perceptions of adequate levels of care. For example, in health care, communities can have very different needs and expectations. The notion of what is an appropriate intervention into a family situation can vary considerably. It is vital that the administration of the institution be consistent with, responsive to and reflective of the cultural and linguistic nature of the community.

Furthermore a cultural component is often essential to the success of services - psychiatric services being a good example.

Transitional Provisions

In the implementation of any major change of this sort it is necessary to make allowances for a smooth transition.

Such provisions may be required, for example, in the event that the province of Ontario does, in fact, require time to implement Article 133; transitional provisions allowing for a reasonable delay for implementation may be provided.

In the area of education, while we subscribe to the principles referred to in 5, 6, and 7 above, certain factors may necessitate a transitional provision. For example, individuals whose children are attending English language schools and may be considered to be "members" of the English community but who would not qualify under the "First language learned and still understood" criterion. For example, there are also persons who arrived in Canada when "freedom of choice" applied and persons who have children in English schools, under other rules.

As a result of problems such as those mentioned above there is a serious current of opinion that supports "freedom of choice" in education since it would eliminate the difficult distinctions that any system of restricted access necessarily implies.

The following comments are made with a view to ensuring that the Canadian Charter of Rights and Freedoms (the "Charter") which the Federal Government seeks to entrench in the Constitution protects the rights and freedoms of Canadians. An entrenched Bill would enable the Courts to control the activities of the State according to the interpretation which the judges give to its contents. Such a charter should also have a moral significance, being the expression of the very basis of our rights and freedoms. The history of the interpretation of the Canadian Bill of Rights (1960) shows that the form of a Charter of Rights is as important as its content. If the expressions used are not sufficiently clear, a Charter, even if entrenched, risks having few practical effects and would lose its symbolic value.

It should be emphasized that the Canadian Charter of Rights and Freedoms is not the only basic document concerning human rights in Canada. Reference has already been made to the Canadian Bill of Rights of 1960. Three provinces (Alberta, Quebec, Saskatchewan) have Bills of Rights and the other provinces have laws against discrimination. Canada ratified the international covenants of the United Nations on human rights in 1976 having already been bound by the other parts of what is sometimes referred to as the "International Bill of Rights", namely the Charter of the United Nations and the Universal Declaration of Human Rights.

The comments contained in this document on the sections of the Charter are based on the models provided by the principal Canadian and international documents on human rights.

Comments on the Sections

Section 1 - The reference in this section to the idea of a "parliamentary system of government" as a limit to the rights set out in the Charter does not seem useful. It could result in judicial interpretation of the whole document which would remove all primacy of the Charter over federal and provincial laws. It would be more useful to look to article 29 of the Universal Declaration and to remove the words "with a parliamentary system of government" from this section of the Charter.

The expression "subject only to such reasonable limits as are generally accepted" establishes a standard, resting as it does on popular acceptance that might fluctuate in a way that would be detrimental to human rights. It would be better to adopt a wording such as "subject only to such limitations prescribed by law as are justifiable in a free and democratic society".

Section 2 - The English text of this section ("Everyone has the following fundamental freedoms...") is ambiguous in

the sense that it could be interpreted as being a simple observation rather than a command. It is known that some judges interpreted section 1 of the Canadian Bill of Rights so as to take from it all force of control over the legality of laws adopted before 1960.

In order to avoid this possibility with the Charter it is suggested that the following form be used, "Everyone shall have the following fundamental freedoms ..." In the principal international documents this form is often used to describe fundamental rights. These remarks apply to sections 3,6,7,8,9,10,11,12,13,14, and 15. The French text "(chacun a les libertés fondamentales suivantes)" can be interpreted as being a command as well as a simple observation. But why speak only of the "grands moyens d'information" in the French text in the context of freedom of expression? The English text is not so restrictive.

Section 3 - The limit contained in this section on the right to vote and eligibility is badly written. The idea of "unreasonable distinction or limitation" is too vague and uncertain. According to section 1 all rights are recognized "subject only to such reasonable limits as are generally accepted in a free and democratic

society". It is preferable to leave the courts to interpret this or other similar expressions as a limit to all rights in specific cases. This remark applies to section 7, 8 and 9.

Section 7 - The limit contained in this section on the right to life, liberty and security of the person is badly worded for the reasons mentioned in connection with section 3. The text of article 3 of the Universal Declaration should be followed, it being understood that section 1 applies to control possible abuses of these rights. Also the idea of "fundamental justice" has no precise legal meaning.

Section 8 - As written this section offers no real protection against abusive searches and seizures authorized by Parliament or the legislatures. In Canada federal and provincial officials such as customs officers and game wardens have unlimited warrants of seizure. This section imposes no limits on such warrants which are forbidden by the fourth amendment in the United States. It should simply be stated that "Everyone shall have the right not to be subjected to unreasonable search or seizure".

Section 9 - This section is excessively vague since it subordinates recognition of these rights to conditions imposed by

the legislator. The formula of article 9 of the Universal Declaration should be adopted, "No one shall be subject to arbitrary arrest, detention or exile".

Section 15- There is no reference to discrimination based on language or political opinion, categories which are specifically mentioned in the principal international documents. The formula of article 2 of the Universal Declaration should be adopted, thereby forbidding discrimination based "on distinctions of any kind such as race etc... or other status".

Section 25- The English and French texts of this key section do not at all correspond. The French text speaks only of the inoperativeness of a provision of law which is incompatible with the Charter while only the English text provides that such inoperative provision "shall have no force or effect". The English text speaks of "any law" while the French text refers to "règle de droit". The two expressions are not synonymous. The English text is better written. The French text should read.

"la présente charte rend inopérantes et sans effet
les dispositions incompatibles de toute autre loi"

The English text should read:

"The provisions of any law that are inconsistent with this Charter shall be inoperative and of no force or effect".

Omissions from the Charter

a) Emergency Powers Legislation

There is a serious omission in the content of the Charter. With the exception of s 4 (2), there is no mention of emergency powers and limits to those powers. Section 1 may serve to limit the abusive exercise of such powers but it would be preferable to follow the model provided by Article 4 of the International Covenant on Civil and Political Rights and to describe the type of circumstances justifying recourse to such emergency powers, rights which cannot be violated even in such periods and the means of judicial control of the exercise of emergency powers. It is essential that reference to emergency powers legislation and controls on such legislation be included in the Charter.

b) Rights to Privacy and Property: Rights Related to Marriage

It may also be noted that the Charter contains no references to the right to property or to protection against arbitrary or abusive seizure of such property. These rights are recognized by Article 17 of the Universal Declaration, and should be specifically recognized in the Constitution. The Charter does not deal with the right to privacy, mentioned in Article 12 of the Universal Declaration, nor with the rights of spouses in regard to marriage which are mentioned in Article 16 of the same Declaration. Such rights are extremely important and should be specifically recognized. The whole area of economic, social and cultural rights is not mentioned, except for the language provisions and section 31 on equalization payments.

Conclusion

The Canadian Charter of Rights and Freedoms is an important document. It should be a historic document destined to a fate similar to that of the U.S. Bill of Rights, but its heavy and stilted form, as well as grave omissions in its content, risk compromising its future in a serious way. It is regrettable that the authors of the document did not follow more closely the clear and precise texts at the international level, the U.S. Bill of Rights and the Quebec Charter of Human Rights and Freedoms.

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This right is essential if English and French speaking Canadians are to be on an equal footing throughout the Country. It would not require that every province provide University facilities in both languages. It would mean that French-language institutions and English-language institutions should be fostered and supported where they are viable. Furthermore provinces would have to extend their financial support of students who were forced to leave the province in order to find an appropriate course in their own language.

BROADCASTING

8. EVERY REGION OF THE COUNTRY MUST HAVE ACCESS TO RADIO AND TELEVISION BROADCASTING IN ENGLISH AND FRENCH.

The ability to participate fully in Canada requires access to the characteristic institutions of Canadian cultural life, information and mass communication. All Canadians should have the right to receive basic communications services in the official languages. Clearly, modern technology makes this goal attainable.

Moreover, the Canadian experience with minority language radio and television broadcasting has achieved a level across the country well beyond the merely developmental stages. Not that much therefore, in our opinion, remains to be done in order to realize this goal.

We must also never lose sight of the *raison d'être* of this process which the present government has undertaken. One of its principal purposes is to strengthen Canada by making it possible for members of the English speaking and French-speaking linguistic communities to live comfortably in their own cultural milieu in all parts of this vast country.

Health and Social Services

9. ACCESS TO HEALTH AND SOCIAL SERVICES IN ENGLISH OR IN FRENCH MUST BE PROVIDED.

The nature of health and social services is such that, in many cases, a service to be effective must be delivered in the language of the recipient. Minority language communities should have available to them, services that are tuned to their needs. In order to properly serve the nature and needs of these communities these services must at least be delivered in the Official language of the user.

10. ENGLISH AND FRENCH SPEAKING MINORITIES MUST HAVE THE RIGHT TO ADMINISTER THEIR OWN HEALTH AND SOCIAL SERVICES INSTITUTIONS, WHERE THE NUMBER OF PERSONS SPEAKING THE MINORITY LANGUAGE IS SUFFICIENT TO WARRANT THE ESTABLISHMENT OF THOSE INSTITUTIONS.

The character of an institution can greatly influence the kind of service it delivers. In the social services, cultural norms determine many of our perceptions of adequate levels of care. For example, in health care, communities can have very different needs and expectations. The notion of what is an appropriate intervention into a family situation can vary considerably. It is vital that the administration of the institution be consistent with, responsive to and reflective of the cultural and linguistic nature of the community.

Furthermore a cultural component is often essential to the success of services - psychiatric services being a good example.

Transitional Provisions

In the implementation of any major change of this sort it is necessary to make allowances for a smooth transition.

Such provisions may be required, for example, in the event that the province of Ontario does, in fact, require time to implement Article 133; transitional provisions allowing for a reasonable delay for implementation may be provided.

In the area of education, while we subscribe to the principles referred to in 5, 6, and 7 above, certain factors may necessitate a transitional provision. For example, individuals whose children are attending English language schools and may be considered to be "members" of the English community but who would not qualify under the "First language learned and still understood "criterion". For example, there are also persons who arrived in Canada when "freedom of choice" applied and persons who have children in English schools, under other rules.

As a result of problems such as those mentioned above there is a serious current of opinion that supports "freedom of choice" in education since it would eliminate the difficult distinctions that any system of restricted access necessarily implies.

Comments on the other articles of the Canadian Charter of Rights and Freedoms.

The following comments are made with a view to ensuring that the Canadian Charter of Rights and Freedoms (the "Charter") which the Federal Government seeks to entrench in the Constitution protects the rights and freedoms of Canadians. An entrenched Bill would enable the Courts to control the activities of the State according to the interpretation which the judges give to its contents. Such a charter should also have a moral significance, being the expression of the very basis of our rights and freedoms. The history of the interpretation of the Canadian Bill of Rights (1960) shows that the form of a Charter of Rights is as important as its content. If the expressions used are not sufficiently clear, a Charter, even if entrenched, risks having few practical effects and would lose its symbolic value.

It should be emphasized that the Canadian Charter of Rights and Freedoms is not the only basic document concerning human rights in Canada. Reference has already been made to the Canadian Bill of Rights of 1960. Three provinces (Alberta, Quebec, Saskatchewan) have Bills of Rights and the other provinces have laws against discrimination. Canada ratified the international covenants of the United Nations on human rights in 1976 having already been bound by the other parts of what is sometimes referred to as the "International Bill of Rights", namely the Charter of the United Nations and the Universal Declaration of Human Rights.

The comments contained in this document on the sections of the Charter are based on the models provided by the principal Canadian and international documents on human rights.

Comments on the Sections

Section 1 - The reference in this section to the idea of a "parliamentary system of government" as a limit to the rights set out in the Charter does not seem useful. It could result in judicial interpretation of the whole document which would remove all primacy of the Charter over federal and provincial laws. It would be more useful to look to article 29 of the Universal Declaration and to remove the words "with a parliamentary system of government" from this section of the Charter.

The expression "subject only to such reasonable limits as are generally accepted" establishes a standard, resting as it does on popular acceptance that might fluctuate in a way that would be detrimental to human rights. It would be better to adopt a wording such as "subject only to such limitations prescribed by law as are justifiable in a free and democratic society".

Section 2 - The English text of this section ("Everyone has the following fundamental freedoms...") is ambiguous in

the sense that it could be interpreted as being a simple observation rather than a command. It is known that some judges interpreted section 1 of the Canadian Bill of Rights so as to take from it all force of control over the legality of laws adopted before 1960.

In order to avoid this possibility with the Charter it is suggested that the following form be used, "Everyone shall have the following fundamental freedoms ..." In the principal international documents this form is often used to describe fundamental rights. These remarks apply to sections 3,6,7,8,9,10,11,12,13,14, and 15. The French text "(chacun a les libertés fondamentales suivantes)" can be interpreted as being a command as well as a simple observation. But why speak only of the "grands moyens d'information" in the French text in the context of freedom of expression? The English text is not so restrictive.

Section 3 - The limit contained in this section on the right to vote and eligibility is badly written. The idea of "unreasonable distinction or limitation" is too vague and uncertain. According to section 1 all rights are recognized "subject only to such reasonable limits as are generally accepted in a free and democratic

society". It is preferable to leave the courts to interpret this or other similar expressions as a limit to all rights in specific cases. This remark applies to section 7, 8 and 9.

Section 7 - The limit contained in this section on the right to life, liberty and security of the person is badly worded for the reasons mentioned in connection with section 3. The text of article 3 of the Universal Declaration should be followed, it being understood that section 1 applies to control possible abuses of these rights. Also the idea of "fundamental justice" has no precise legal meaning.

Section 8 - As written this section offers no real protection against abusive searches and seizures authorized by Parliament or the legislatures. In Canada federal and provincial officials such as customs officers and game wardens have unlimited warrants of seizure. This section imposes no limits on such warrants which are forbidden by the fourth amendment in the United States. It should simply be stated that "Everyone shall have the right not to be subjected to unreasonable search or seizure".

Section 9 - This section is excessively vague since it subordinates recognition of these rights to conditions imposed by

the legislator. The formula of article 9 of the Universal Declaration should be adopted, "No one shall be subject to arbitrary arrest, detention or exile".

Section 15- There is no reference to discrimination based on language or political opinion, categories which are specifically mentioned in the principal international documents. The formula of article 2 of the Universal Declaration should be adopted, thereby forbidding discrimination based "on distinctions of any kind such as race etc... or other status".

Section 25- The English and French texts of this key section do not at all correspond. The French text speaks only of the inoperativeness of a provision of law which is incompatible with the Charter while only the English text provides that such inoperative provision "shall have no force or effect". The English text speaks of "any law" while the French text refers to "règle de droit". The two expressions are not synonymous. The English text is better written. The French text should read.

"la présente charte rend inopérantes et sans effet
les dispositions incompatibles de toute autre loi"

The English text should read:

"The provisions of any law that are inconsistent with this Charter shall be inoperative and of no force or effect".

Omissions from the Charter

a) Emergency Powers Legislation

There is a serious omission in the content of the Charter. With the exception of s 4 (2), there is no mention of emergency powers and limits to those powers. Section 1 may serve to limit the abusive exercise of such powers but it would be preferable to follow the model provided by Article 4 of the International Covenant on Civil and Political Rights and to describe the type of circumstances justifying recourse to such emergency powers, rights which cannot be violated even in such periods and the means of judicial control of the exercise of emergency powers. It is essential that reference to emergency powers legislation and controls on such legislation be included in the Charter.

b) Rights to Privacy and Property: Rights Related to Marriage

It may also be noted that the Charter contains no references to the right to property or to protection against arbitrary or abusive seizure of such property. These rights are recognized by Article 17 of the Universal Declaration, and should be specifically recognized in the Constitution. The Charter does not deal with the right to privacy, mentioned in Article 12 of the Universal Declaration, nor with the rights of spouses in regard to marriage which are mentioned in Article 16 of the same Declaration. Such rights are extremely important and should be specifically recognized. The whole area of economic, social and cultural rights is not mentioned, except for the language provisions and section 31 on equalization payments.

Conclusion

The Canadian Charter of Rights and Freedoms is an important document. It should be a historic document destined to a fate similar to that of the U.S. Bill of Rights, but its heavy and stilted form, as well as grave omissions in its content, risk compromising its future in a serious way. It is regrettable that the authors of the document did not follow more closely the clear and precise texts at the international level, the U.S. Bill of Rights and the Quebec Charter of Human Rights and Freedoms.