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S U B M I S S I O N

TO THE
SPECIAL JOINT COMMITTEE
ON THE
CONSTITUTION OF CANADA

by the
CANADIAN ASSOCIATION OF SOCIAL WORKERS

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This submission reiterates positions referred to in a letter from our Association to the Prime Minister of Canada on November 4th, 1980. They relate to aspects of the Canadian Charter of Human Rights as set out in the proposed Constitution Act, 1980 and to a subject not specifically dealt with in that measure, namely the distribution of powers respecting social welfare between the Parliament of Canada and the provincial legislatures.

Human Rights

We regret that more time was not made available for submissions to the Committee - time our Association would have used to consult our membership more fully than has been possible under the present constraint. We are, however, able to comment on the proposed charter through reference to the policy statements that our Association has developed over the years and, more particularly, on the basis of the human values to which the members of our profession are committed.

We are restricting our comments to three sections of the proposed Act, sections 1, 6, and 15. Moreover, we want to avoid repetition of points made earlier by others through expressing our support for positions taken by civil rights groups and individuals who have already appeared before the Committee, notably those presented by the Chairman of the Human Rights Commission of Canada. We also wish to record our support for the inclusion of provisions in the Act and in other constitutional arrangements that would improve the position of Canada's native people.

In respect to section 1, our Association is concerned that the "reasonable limits" referred to are unlikely to ensure the protection of vulnerable groups and individuals against discriminatory legislative action in times of stress and crisis.

Thus, unless the term "reasonable limits" can be associated with the broadest concepts of human rights, section 1 will endanger the intended purposes of the Act. If it is not strengthened in the manner suggested, the section should, in our view, be deleted.

Our Association, in respect to section 6, strongly supports mobility rights and particularly the right of persons who move from one province to another to be eligible, without delay, for essential income security and social services, including health services. We are therefore strongly opposed to the weakening of the principle of the section by making it subject to "any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services". Senior members of our profession recall the folly, in terms of administrative costs, and the intense hardship for people caused by the barriers provinces formerly set up in respect to social assistance. These, after years of representations by members of our profession, were finally struck down by the federal government, first by the Unemployment Assistance Act and later by the Canada Assistance Plan. We deplore the continued residence requirements in respect to hospital and medical care. They should be eliminated. Subsection 3(b) of section 6 would perpetuate their retention and quite possibly permit the re-introduction of the invidious and discredited inter-provincial barriers to social assistance. We urge, in the strongest terms, that this highly regressive provision be eliminated from the Act.

Our concerns about section 15 of the Act are two-fold. Subsection 1 omits important forms of discrimination: discrimination because of sexual orientation, discrimination because of political affiliation, discrimination against the handicapped. Subsection 2, though aimed at permitting various forms of affirmative action, may fail to do so. Members of our profession have long experience in dealing with the complex issues of "universality", which we regard

as the desired objective, and "selectivity" and "categorization", which continue to be the basis for many necessary social programs. It would be unfortunate if action by the courts in interpreting section 15, were to result in specialized programs, which will be needed for many years, being declared "discriminatory". More thought therefore needs to be given to the questions we have raised about this section.

The Division of Powers Respecting Social Welfare

A patriated constitution with a charter of human rights freed of the defects we have referred to above will be welcomed, we are convinced, by our profession and by other helping professions.

A remaining and related concern of our Association, however, is the division of legislative powers between the federal and provincial governments in respect to social welfare. "Exclusivity" of jurisdiction over social welfare by either level of government is the wrong principle. It must, in our view, be discarded and replaced by the concept of equal powers, as exemplified in the present constitution in respect to agriculture and immigration. Rational rather than doctrinaire approaches should determine the sharing of powers and responsibilities. The capacity of the particular level of government to carry out a given function in the best interest of all the people of Canada should be the definitive criterion. Accordingly, the actual provision of health services and community and personal social services is best carried out by the provinces and this is also true of some forms of income security. In general, income security measures should be nation-wide and thus federally administered. Our main point and one we will be bringing forward in more detailed presentation to both levels of government is that the Parliament and Government of Canada must be constitutionally entitled to work closely and continuously with the Provinces in seeing

that all across Canada adequate income security measures and the needed range of social services are provided, and provided as a right associated with Canadian Citizenship.

We are bringing this matter to the attention of the Committee because of our conviction that even as the constitution with a charter of human rights is being patriated, this unfinished business from earlier constitutional reviews needs to be kept to the fore. It is, we assert, fundamental to that most basic of rights, the right to security - social security.