



Canadian Co-ordinating
Council on Deafness

Conseil canadien de coordination
de la déficience auditive

A BRIEF BY
THE CANADIAN CO-ORDINATING COUNCIL ON DEAFNESS
TO
THE SPECIAL JOINT COMMITTEE
ON THE CONSTITUTION OF CANADA

CANADA ACT, PART ONE
THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

SYNOPSIS

1. The fundamental principles governing Canadian society should be entrenched in a constitutional document with primacy over all other legislation.
2. The guarantee of individual human rights is the most basic and most important principle of a free and democratic society.
3. Individual human rights, guaranteed for all men and women living in Canada, must be protected against infringement and curtailment for whatever reasons.

CANADA ACT, PART ONETHE CANADIAN CHARTER OF RIGHTS AND FREEDOMSINTRODUCTION

The CCCD agrees with the Government of Canada that individual human rights, in order to be adequately safeguarded, must be entrenched in the Canadian Constitution.

AIM

It is the aim of this document to outline the views of the Council regarding the contents of the proposed Charter of Rights and Freedoms and to recommend changes in order to render it more effective.

DISCUSSION

The CCCD supported the principle of entrenchment of human rights in the Constitution in its appearance before the Special Committee on the Disabled and the Handicapped earlier this year. This was reiterated in a letter to the Prime Minister of October 7th pointing out some perceived deficiencies in the proposed Canada Act.

It is a universally recognized principle that the most fundamental elements of society should be found in a constitution having primacy over all other legislation. The standards of any given society are measured by the practical application of that theoretical principle.

A society which is free and democratic in fact as well as in theory will not neglect to protect the rights of the people living within its jurisdiction.

It is a regrettable fact of Canadian life that many of our people, while professing a belief in democracy, see nothing wrong in infringing on the civil liberties of their fellow citizens. They prefer to ignore or downgrade what they do not know, or what they do not like or understand. However, individual human rights are an absolute and cannot be subjected to the vagaries of individual taste. They must be kept safe from personal as well as commercial and political interests and interference. They must be kept safe from the demagogues who would exploit society for their own ends.

It is the responsibility of legislators at all levels of government to ensure that social justice is made to prevail in the face of opposition from the ignorant or the bigoted, even if that opposition should come from the majority.

Canada has a relatively long history as a country with democratic institutions. It also, sadly, has given the world many examples of discrimination against its own citizens. (The fact that other countries may

have a worse record is irrelevant.) There are examples of oppression of individuals by other individuals, of minority groups by the majority, and even of a majority by a minority group. Specific, easily identifiable examples concern the rights of our natives, women's rights, language rights, and political excesses such as the treatment of Japanese Canadians between 1941 and 1945 and of certain individuals during the political kidnappings of October 1970.

The fact that these things were allowed to occur in this country makes it imperative that individual human rights be better and more explicitly protected in any new constitution. As long as even one inhabitant of this country can be discriminated against legally whether by another individual or by the state itself, for whatever reason, we are all in danger of discrimination. If the constitution permits discrimination against any person, it is of doubtful value as society's most basic document.

The content and the wording of the Charter of Rights and Freedoms must be clear, precise, and specific as to the intent of Parliament. Canadians in general and the courts, whose task it is to interpret the intent of Parliament, in particular must be left in no doubt as to what degree of protection is to be extended to those members of society who need to be protected. All of us without exception need the guarantee of our human rights. Canadians, regardless of political belief, would be rightly cynical of the political process and of their legislators, at whatever level, if their fundamental rights were to be described on the basis of political expediency.

Canadians, among whom the deaf and hard of hearing are a sizeable minority, expect Parliament to guarantee them their fundamental rights on the basis of social justice and not on the basis of economic cost or political popularity. The rights referred to include both equality before the law as well as protection by the law against discrimination of any kind.

RECOMMENDATIONS

In its present form, the non-discrimination clause (Section 15(1)) of the proposed Canada Act is seriously deficient because it does not provide protection for those segments of society which require it, and because it is not at all specific as to what kind of legal protection is to be extended.

The Canadian Co-ordinating Council on Deafness makes the following recommendations to increase the effectiveness of the Canadian Charter of Rights and Freedoms:

1. The simplest, most effective and clearest statement of individual human rights would be to make illegal all forms of discrimination for any reason whatsoever.

2. An alternate option would be to enumerate the prohibited grounds of discrimination and the areas to which protection under the law is extended.

3. If the second option is adopted, the non-discrimination clause must not only provide for equality before the law, but also specifically prohibit discrimination in the provision of goods, services, facilities, accommodation, and in matters of employment.

4. Furthermore, if the second option is adopted, the clause must be made more all inclusive in specifying the grounds on which discrimination is prohibited, i.e. on the grounds of race, national or ethnic origin, colour, religion, age, sex, marital status (or family or civil status), conviction for an offence for which a pardon has been granted, physical disability, mental deficiency, sexual orientation, and political belief.

5. With both the first or the second option, the Charter should continue to make provision for affirmative action programs as currently contained in Section 15(2).

6. Section 1 of the proposed Canada Act places the entire Charter of Rights in jeopardy because of its extremely broad wording. It should either be deleted in its entirety on the grounds that limitations on human rights are unacceptable for any reason, or be worded very narrowly to prevent its indiscriminate application.

None of the foregoing recommendations represent new or original departures from what has been said before and often. What needs to be done in the area of human rights is well known and well documented. Deaf and hard of hearing Canadians will follow the deliberations of their elected representatives with interest and will judge their commitment to the cause of human rights by the results achieved when the final version of the proposed legislation is dealt with by Parliament.

POSTSCRIPT

This brief has dealt only with deficiencies in the content of the proposed Canadian Charter of Rights and Freedoms. It does not comment upon the procedure used by Parliament to implement constitutional reform. To do so would be outside the scope of the Council's mandate and would infringe upon the individual political rights of its members.

Ottawa, November 1980