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**Submission  
of the  
Select Committee  
on the  
Constitution of Canada**

**Canadian Jewish Congress**

November 1980

CANADIAN JEWISH CONGRESS    CONGRÈS JUIF CANADIEN

Edifice Samuel Bronfman House, 1590 Avenue Docteur Penfield  
Montréal H3G 1C5 Québec (514) 931-7531 CABLES EMETCON MONTREAL

November 13th, 1980

Select Committee on  
the Canadian Constitution

Prof. Maxwell Cohen, O.C., Q.C.  
Ottawa Montreal, Chairman

Prof. Harry Arthurs, Toronto  
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Alan Rose, Montreal  
Lionel Schipper, Q.C., Toronto  
Frank Schlesinger, Montreal  
Prof. Stephen Scott, Montreal  
Morris Shumiatcher, Q.C., Regina  
Prof. Janice Stein, Montreal/  
Toronto

B. G. Kayfetz, Secretary  
150 Beverley St.  
Toronto M5T 1Y6  
(416) 977-3811

Prof. Joseph Magnet, Ottawa,  
Special Advisor

The Hon. Senator Harry Hays  
and Mr. Serge Joyal, M.P.  
Co-Chairmen of the Special  
Joint Committee of the Senate  
and of the House of Commons on  
the Constitution of Canada  
Houses of Parliament  
Ottawa, Ontario

My dear Co-Chairmen,

The Canadian Jewish Congress Select  
Committee on the Canadian Constitution has  
the honour to present the following Sub-  
mission containing the views of the Com-  
mittee on the Proposed Canadian Charter of  
Rights and Freedoms.

The Committee's membership, as listed  
on this letterhead, includes experienced  
lawyers and scholars of Canadian constitu-  
tional law, Canadian human rights law and  
other public law areas within the Canadian  
political system. Included also in the  
membership are all of the regions of Canada  
and varieties of political affiliation.

The Committee already had written on  
August 21, 1980 to the Prime Minister of Cana-  
da, and to the ten First Ministers of the  
Provinces, outlining its program of study of  
the various aspects of human rights in Canada.  
It requested the views of the First Ministers  
on this proposed program and expressed support  
for a system of constitutionally entrenched  
rights for Canada. (see attached)

The Committee is aware that there is an  
important debate underway on the need for such  
a Charter considering the long tradition of  
"Rights" and "Freedoms" within the Anglo-  
Canadian constitutional and political system,

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and stated with cogency by several provincial First Ministers. The Committee has considered carefully this position. However, it is also aware of the long-standing problems associated with the achievement of a program of nationally recognized language and education rights in Canada. Equally, there is the need for national rules to protect the interests of individuals or groups against direct or indirect forms of discrimination or inequality. There is also the potential for interference with "human rights" when these are not fully articulated or clarified. Finally, there is the impact of the modern, interventionist state upon individuals and groups through legislative or executive behaviour that may violate, even if unintentionally, certain well understood claims and rights. For all these reasons it seems to the Committee no longer desirable to leave basic rights and freedoms to the protection of statutes or of the common law alone.

In short, the Committee believes that Canada will be served best by adopting some high statement of fundamental rights and freedoms. For the very presence of such a statement helps to crystallize national values and to provide rules and procedures that will better guarantee such values, secured now by the supreme law of the land—the Constitution of Canada.

In pursuing this objective of values and rights enshrined in the Constitution the Committee also believes that Canada will be more fully in accord with its obligation under various international instruments dealing with Human Rights and Fundamental Freedoms and to which it is a party—including the United Nations Covenant on Civil and Political Rights.

The adoption of a Charter of Rights may seem to shift greater responsibilities to the Canadian Courts. But the Committee desires to point to a long Canadian tradition that already has imposed such constitutional duties on the Courts involving the interpretation of Sections 133 and 93 as well as other provisions of the Act. Similarly, there has been the quasi-constitutional character of issues involved in the interpretation of the Canadian Bill of Rights and of federal and provincial statutes creating federal and provincial Human Rights Commissions. Together with the application of criminal law and procedure as well as varieties of provincial and municipal legislation, and paralleled by the evolution of modern principles of administrative law, these experiences have given Canadian Courts broad opportunities to deal with many aspects of Human Rights and Fundamental Freedoms.

The Canadian political and legal system, therefore, will not come unprepared for this additional task that results from applying a constitutionally entrenched system of Rights to the whole of the Canadian legal order.

The standpoint adopted by the Canadian Jewish Congress, through this Select Committee, should be regarded as expressing a general Canadian point of view that shares principles and values with many other Canadians whatever their community or religious

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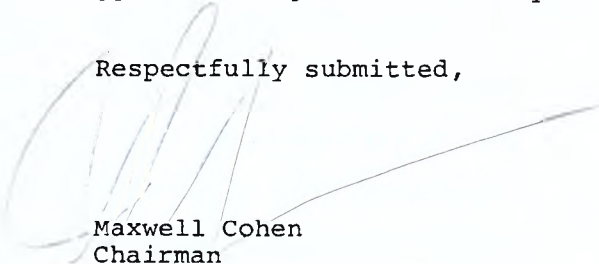
affiliations may be. Naturally, there are some matters of particular concern to many members of the Jewish Community of Canada. These are, for example: the possibility of one or more of these constitutional provisions affecting the "status" of alleged "war criminals" now living in Canada; the need for assurances that the entrenched protection of free speech will not also protect dissemination of "hate propaganda" as defined in the Criminal Code, or more generally; and finally, "affirmative action" programs that may lead to quotas in the name of program preferences—for historically quotas have been symbols of, and barriers to, equality of opportunity. Nevertheless, the primary thrust of the Select Committee's views is in the direction of a broad association with all Canadians concerned with the clear benefits of a Charter in any future Canadian constitutional system.

The proposed Charter does not seem to include any provisions that deal with "enforcement" as such. Of course, issues involving "rights" would arise often in proceedings before tribunals either in the course of civil litigation or criminal proceedings. Nevertheless, there seems to be an important gap in the "enforcement" process. The Committee, therefore, addresses itself to this matter at the conclusion of its analysis of the Charter.

Similarly the question of national emergencies also has been given some special attention in this Submission in view of the problems raised by Article 1 as well as in other Articles of the Charter purporting to deal with "emergency" situations.

The Select Committee is convinced that the best interests of Canada will be served by the entrenchment in the Constitution of Canada of the Proposed Canadian Charter of Rights and Freedoms subject, however, to the comments and suggested changes in the analysis that follows.

Respectfully submitted,



Maxwell Cohen  
Chairman

SECTION ONE

"The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government."

The Committee is of opinion that the section should be deleted.

Section one attempts to do two things:

- (1) it puports to guarantee Charter rights and freedoms subject to limitations;
- (2) it provides justification for suspension of Charter rights during an emergency.

In the Committee's opinion the section accomplishes neither function satisfactorily.

Section 1 goes entirely too far in signalling caution to the courts to interfere with the legislature. A broad qualifying clause, such as s.1, placed at the Charter's head, upsets the necessary balance between the Court and the Legislature in a Charter based judicial review system. The reference to a parliamentary system of government opens the door to an unprofitable, but inevitable debate about the authority of Parliament to determine for itself whether its legislation conforms to constitutional requirements.

In the Committee's view, defining the amplitude of Charter rights is properly a judicial task. To place a wide limitation clause at the beginning of the Charter tilts the balance unduly in the legislature's favour. It is likely to produce an unproductive debate about Parliamentary supremacy. It may weaken the Charter system now to become the basis of Canadian constitutional law.

Furthermore, broad qualification at the beginning of the Charter seriously weakens its educational impact. The Committee prefers to state general constitutional rights in a terse, abstract way in order to maximize the impact of a sense of constitutional liberty on the Canadian consciousness. Statement of qualified rights diminishes this impression; parliamentary sovereignty introduces ambiguity.

The Committee points out that as presently drafted section 1 is inconsistent with Canada's obligations under Article 5(1) of the International Covenant on Civil and Political Rights, 1966. Article 5 (1) provides that no state may limit rights and freedoms "to a greater extent than is provided for in the present Covenant". The Covenant provides for no such broad limitation of rights.

Finally, the Committee recommends that a separate clause providing for qualification of Charter rights during emergencies should be included at the end of the Charter. A model clause is attached as section 28A.

## SECTION TWO

- "Everyone has the following fundamental freedoms:
- (a) freedom of conscience and religion;
  - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of information; and
  - (c) freedom of peaceful assembly and of association."

The Committee is concerned about the effect of section 2(b) on Hate Propaganda Legislation currently in place at secs. 281.1 and 281.2 of the Criminal Code. Under Article 20 of the International Covenant on Civil and Political Rights, 1966, Canada has the obligation to prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". By Article 19(3) of the Covenant domestic

legislation may subject the right to freedom of speech to restrictions necessary "for respect of the rights or reputations of others". Hate propaganda legislation falls squarely within the internationally recognized exceptions to freedom of speech.

### SECTION THREE

"Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

The Committee is of opinion that section 3 must be broadened. Section 3 entitles every citizen of Canada "to be qualified for membership" in the House of Commons and a legislative assembly. However, the section does not include the right to take office if elected. The Committee recommends that the section place a check on legislative power, by unreasonable subsidiary requirements, to exclude from office members duly qualified and elected.

### SECTION FOUR

- "(1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.
- (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be."

The Committee is of the view that the words "real or apprehended" should be deleted from sub-section 2. The deletion would bring section 4(2) into line with the emergency theory suggested by the Committee at section 28A. It would eliminate the present concerns about resort to emergency powers on the basis of "apprehensions".

SECTION SIX

- "(1) Every citizen of Canada has the right to enter, remain in and leave Canada.
- (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
- (a) to move to and take up residence in any province;and
  - (b) to pursue the gaining of a livelihood in any province.
- (3) The rights specified in subsection (2) are subject to
- (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis or province of present or previous residence;and
  - (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services."

In view of the Committee's suggested elimination of section 1, section 6(1) should be amended. The Committee suggests the addition of the words "subject to application of the law of extradition and criminal law", after the last word of section 6(1).

The Committee recommends broadening the protection of s.6(1) in the following ways. First, "permanent residents" of Canada, however judicially defined, as well as citizens, should have full protection of s.6(1). Secondly, in conformity with Article 12(2) of the International Covenant on Civil and Political Rights, 1966, the right to leave Canada should be accorded to everyone, subject to the suggested proviso respecting criminal and extradition laws. Finally, Canada is a signatory to the Convention Relating to the Status of Refugees, 1951. Regard must therefore be had to obligations incurred under Articles 31-33 of that Convention. These articles provide for protection from arbitrary expulsion and unreasonable restriction on movement.



In conformity with Article 12(1) of the International Covenant on Civil and Political Rights, 1966, the protection of Section 6(2) should be broadened to include 'everyone lawfully within Canada'. Under Article 26 of the Convention Relating to the Status of Refugees, 1951, Canada has the further obligation to accord s.6(2) rights to refugees lawfully within Canadian territory.

SECTION SEVEN

"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The Committee assumes that, consistent with its own views, the word "Everyone" in section 7 embraces persons in Canada illegally.

SECTION EIGHT

"Everyone has the right not to be subjected to search or seizure except on grounds, and in accordance with procedures, established by law".

The Committee observes that as presently drafted s.8 permits searches and seizures of any kind if supported by statute. Accordingly, the Committee is of opinion that some limitation must be placed on powers of search and seizure in order to prevent arbitrary and unreasonable searches and seizures. Accordingly, the Committee recommends that section 8 be redrafted as follows:

"8. Everyone has the right not to be subjected to arbitrary or unreasonable search or seizure".

SECTION NINE

"Everyone has the right not to be detained or imprisoned except on grounds, and in accordance with procedures, established by law".

Similarly, the Committee observes that some limitation must be placed on powers of arrest in order to prevent arbitrary and unreasonable detentions. Accordingly, the Committee recommends that section 9 be redrafted as follows:

"Everyone has the right not to be arbitrarily or unreasonably detained or imprisoned".

SECTION TEN

"Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay; and
- (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful."

The Committee recommends that, consistent with obligations under Article 14(3)(d) of the International Covenant on Civil and Political Rights, 1966, the protection of section 10 be broadened to include, on arrest, the right to legal aid. In the Committee's opinion, it is intolerable to discriminate between rich and poor with respect to the right of an arrested person to retain and instruct counsel.

The Committee observes that section 10(b) rights cannot be fully effective unless there is a corresponding duty upon public authorities to inform an arrested person of the right to retain and instruct counsel without delay. While endorsing the right to be told, the Committee refrains from endorsing a corresponding exclusionary rule when the right to be told is infringed. In the Committee's opinion, creation of appropriate remedies is properly a judicial task to be worked out on a case by case basis under the Committee's proposed enforcement clause at s.25A. It would be for the Courts to decide whether evidence taken in breach of s.10(b) should be

excluded, whether denial of the s.10(b) right should be a factor in determining the voluntariness of an accused's confession, or whether some other remedy would be expedient.

The Committee observes that s.10(b) in the present French version gives a clear right of access to counsel to a degree not so manifestly stated in the English text.

SECTION ELEVEN

"Anyone charged with an offence has the right

- (a) to be informed promptly of the specific offence;
- (b) to be tried within a reasonable time;
- (c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (d) not to be denied reasonable bail except on grounds, and in accordance with procedures, established by law;
- (e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence;
- (f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and
- (g) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.

The Committee has discussed the question whether constitution-  
alization of the presumption of innocence as s.11(c) will disturb  
the evolution of the defense of due diligence as articulated by  
the Supreme Court in R.v. Sault Ste. Marie, (1978)2 S.C.R. 1299.  
In the Committee's opinion, s.11(c) will not interfere with the  
shifting onus under the Sault Ste. Marie doctrine.

The Committee observes that the drafting of s.11(d) is defective because it does not afford protection against unreasonable bail. As presently drafted, reasonable bail may be denied if in accordance with law and legal procedure. In the Committee's opinion, this makes s.11(d) superfluous. The Committee recommends that s.11(d) be redrafted as follows;

"not to be arbitrarily or unreasonably denied bail".

The Committee is seriously concerned about the effect of s.11(e) on successful prosecution of War Criminals. The concern arises because it is unclear whether the word "offense" in s.11(e) includes international war crimes. If it does, Canada would become a safe haven for Nazi War Criminals.

The Committee observes that Article 15(1) of the International Covenant of Civil and Political Rights, 1966, provides for protection against retroactivity of criminal offences "under national or international law", but makes the protection subject to Article 15(2). Article 15(2) provides:

"nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principle of law recognized by the community of nations".

The Committee observes that the Covenant similarly prevents a double jeopardy argument from benefiting a War Criminal who was tried in absentia in some other jurisdiction. The Covenant provides at Article 14(7) that a foreign conviction or acquittal has to be "in accordance with the law and penal procedure of each country". The Committee is of opinion that it would be desirable to modify s.11(e) accordingly to meet the above difficulties.

The Committee is of opinion that section 11(f) is far too narrow in that it offers no protection against double jeopardy for related offences, or offences substantially the same as the principle offence. Nor does the section prevent the Crown from unreasonably splitting a case. The Committee accordingly recommends that the word "offence" in s.11(f) be replaced by the words "acts giving rise to an offence".

#### SECTION THIRTEEN

"A witness has the right when compelled to testify not to have any incriminating evidence so given used to incriminate him or her in any other proceedings, except a prosecution for perjury or for the giving of contradictory evidence".

The Committee observes that s.13 is inconsistent with obligations arising under Article 14(3)(g) of the International Covenant on Civil and Political Rights, 1966. S.13 allows a witness in third party proceedings to be compelled to testify against himself, but protects against use of evidence so given in subsequent proceedings. Article 14(3)(g) of the Covenant provides that "Everyone shall be entitled to the following minimum guarantees...(g) not to be compelled to testify against himself or to confess guilt".

Under present law - see Tass v. King (1946), 87 C.C.C. 97 (S.C.C.) - a witness in third party proceedings must specifically request, under s.5 of the Canada Evidence Act, exclusion of self-incriminating evidence in former proceedings. If he fails to do so, his self-incriminating evidence may be used against him at a subsequent trial, notwithstanding that he did not know his rights at the time he was being asked to testify.

The Committee recommends that section 13 be broadened in order to require that a witness in third party proceedings be told that, although compellable, no evidence which he gives may be used against him in subsequent proceedings.

#### SECTION FIFTEEN

- " (1) Everyone has the right to equality before the law and to the equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.
- (2) This section does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups."

While the Committee is reluctant to accept any general theory of quotas in the name of affirmative action, the Committee understands that there will be situations where years of cultural or educational deprivation will have created inequities. The Committee accepts that such inequities can be dealt with by regional affirmative action programs. Generally, the Committee is not in favour of quota systems and regards these cases as exceptions.

#### SECTION SIXTEEN

- " (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
- (2) Nothing in this Charter limits the authority of Parliament or a legislature to extend the status or use of English and French or either of those languages.

The Committee observes that the word "extend" in s.16(2) is imperfectly reflected by the French equivalent "d'ameliorer". The two concepts should be brought into line. The Committee observes that this could be done by changing the English word "extend" to "improve".

SECTIONS NINETEEN AND TWENTY

"Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament".

"Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, as he or she may choose, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language".

Similarly, the Committee observes that the words "English or French" are imperfectly reflected in the French equivalent "la langue officielle". Furthermore, there is a conceptual difference. The Committee recommends that these two concepts be brought into line.

SECTION TWENTY THREE

- " (1) Citizens of Canada whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside have the right to have their children receive their primary and secondary school instruction in that minority language if they reside in an area of the province in which the number of children of such citizens is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.
- (2) Where a citizen of Canada changes residence from one province to another and, prior to the change, any child of that citizen has been receiving his or her primary or secondary school instruction in either English or French, that citizen has the right to have any or all of his or her children receive their primary and secondary school instruction in that same language if the number of children of citizens resident in the area of the province to which the citizen has moved, who have a right recognized by this section, is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

The Committee is concerned about several aspects of s.23(1). First, the Committee is of opinion that everyone should be able to claim protection of this section. The Committee is unconvinced that the Section should be limited to "Citizens of Canada". Secondly, the Committee strongly objects to the concept of "first language learned and still understood". This implies language testing, which the Committee believes to be highly improper. Finally, the Committee observes that the present wording implies that only publicly funded minority language education will be permitted. In the Committee's view, privately funded minority language education should be permitted as well.

Therefore, the Committee recommends that section 23(1) be redrafted as follows:

"Any person residing in Canada whose language of education at the primary or secondary level is that of the English or French linguistic minority population of the Province in which he or she resides has the right to have his or her children receive their kindergarten, primary and secondary school instruction in that minority language".

"If he or she resides in an area of the Province in which the number of children of such residents is sufficient, public funds shall be provided for such instruction".

The same reasoning applies to section 23(2). However, because the citizenship requirement has been deleted, some provision which prevents avoidance of the discipline of section 23(1) is tolerable. The spirit of section 23(2) protects a child who has commenced his education in the minority language in another province. In order that such child not be required to change in midstream, the following version is suggested.



"Where any resident of Canada changes residence from one province to another, and prior to the change, any child of that person has received at least three consecutive years of his or her kindergarten, primary or secondary instruction in either English or French, that person has the right to have any or all of his or her children receive their primary and secondary school instruction in that same language.

If the number of children of those persons resident in the area of the province to which that person has moved and who have a right recognized by this section is sufficient, public funds shall be provided for such instruction".

SECTION TWENTY FIVE

"Any law that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect".

The Committee is of the opinion that it is desirable to prevent any unprofitable debate, such as that which has plagued the Diefenbaker Bill of Rights, about application of the Charter. Therefore, the Committee recommends that the words "enacted before or after the coming into the force of this Charter" be inserted after the word "law" in s.25.

SECTION TWENTY NINE

- "(1) This Charter applies
- (a) to the Parliament and government of Canada and to all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
  - (b) to the legislature and government of each province and to all matters within the authority of the legislature of each province.
- (2) Notwithstanding subsection (1), section 15 shall not have application until three years after this Act, except Part V, comes into force".

The Committee sees no reason why s.29(2) should provide for a general three year delay for the coming into force of section 15.

The Committee understands that inclusion of a prohibition on discrimination because of age creates difficulty in that policies respecting age and retirement might require adaptation. Thus, the Committee recommends that the delay be restricted to the age provision of s.15(1), and not to s.15 as a whole.

## GENERALLY

### Enforcement

The Committee observes that the Charter is deficient in failing to include any provision relating to enforcement, other than the as yet unknown consequences of applying the Charter to civil and criminal cases as they arise before the courts. Even then, courts may be reluctant to give directions or orders. Therefore, some explicit statement of remedies and enforcement procedures is required.

Obligations incurred under the International Covenant on Civil and Political Rights, 1966, require Canada "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity...". Furthermore, Article 9(5) of the Covenant provides that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

In the Committee's opinion, an enforcement clause is mandatory. Therefore, the Committee recommends inclusion of the following section:

- "25a. Everyone entitled in law to the performance by a public authority of an act or omission shall, in cases of actual or threatened default, be entitled to full and effectual relief, by mandatory or restraining order of a superior court, to compel the performance of the act or omission. Pecuniary compensation shall be awarded in appropriate cases".

Emergency

The Committee is of opinion that provision should be made for limiting Charter rights during emergencies. The Committee is concerned that such limitation not be more sweeping than necessary. It is equally concerned that circumstances giving rise to limitation of Charter rights not be unreasonably vague. Therefore, the Committee recommends inclusion of the following section:

- "28a. In case of war, domestic insurrection, or natural calamity threatening the life or safety of the nation or any part thereof, the rights enumerated in this Charter may be subjected to such reasonable limits as are strictly required by the exigencies of the actual emergency. Any measures enacted under this clause which are inconsistent with the ordinary operation of this Charter shall lapse after 20 days, if not further extended by a 2/3rds vote of the Parliament of Canada".

CANADIAN JEWISH CONGRESS CONGRÈS JUIF CANADIEN

1000 AVENUE DOCTEUR PENFIELD MONTREAL H3G 1G5 QUEBEC 1014 911 1111 CARLES EMETSON MONTREAL

August 21, 1980

Select Committee on the Canadian Constitution

The Rt. Hon. Pierre Elliott Trudeau, P.C., Q.C., M.P. Prime Minister of Canada House of Commons Ottawa, Canada

Dear Prime Minister:

The Canadian Jewish Congress at a recent meeting of National Officers established a Select Committee on the Canadian Constitution with myself as Chairman and including as members those listed on this letterhead. The Committee's composition reflects experience from the practising bar, the universities, and varying degrees of community activity and almost all regions of Canada are represented.

The Committee hopes to make a useful contribution to the deliberations of the First Ministers and their colleagues at this important and critical time when the basic character of the Canadian federal system is being fully examined and broad and significant changes are envisaged.

It is not the intent of the Committee to address itself to all of the many and complex questions that are now being examined by you and your colleagues. Rather, the Committee believes it can best contribute to the fund of ideas, the approaches possible to implement them, if it confines itself to those areas of particular concern to the Canadian Jewish Congress which has long interested itself in the human rights of all Canadians.

To this end the Committee will concentrate on four main areas in the submissions it proposes to make to you and the other First Ministers.

1. Human Rights Generally

The Committee believes it must address its attention, first of all, to the general question of human rights in Canada and the extent to which a revised Canadian constitution should and can embrace this fundamental area of social and political concern. To that extent the Committee's work here will share common ground with many other organizations and individuals in

- List of names and titles of committee members, including names like 'Chairman', 'Vice Presidents', 'Regional Chairmen', etc.

FRANK BENTZ PRESIDENT HIRSH LITTLER HONORARY PRESIDENT MONROE ABBEY C.M. OC IMMEDIATE PAST PRESIDENT RABBI DR. W. GUNTHER BLAUT OC CHAIRMAN BOARD OF DIRECTORS SOL KANEE OC CHAIRMAN NATIONAL EXECUTIVE SAMM FILER OC IMMEDIATE PAST CHAIRMAN NATIONAL EXECUTIVE DAVID SATOR ASSOCIATE CHAIRMAN NATIONAL EXECUTIVE MILTON HARRIS VICE PRESIDENTS BEN PROSSIN DOROTHY REITMAN DONALD CARR OC MR JUSTICE GUY PROFT S BRUCE GREEN CHIEF OF STAFF TREASURER EDWARD B. WOLPINE CA SECRETARY NACHUM WILCHESKY REGIONAL CHAIRMEN FRANK MEINUCK FRANK SCHLESINGER MARCHE BLANNSTEIN HERR LETH IRVING EPSTEIN COMMUNITY COUNCIL REPRESENTATIVES SOL B. SHINIER OC WILFRED POLUNO ALAN ROSE ASSISTANT DIRECTOR STAN URVAK

Canada determined to see certain basic "values", "rights", and "procedures" enshrined or entrenched, wherever possible or desirable, in any redesigned Canadian federal system and its constitution.

2. Matters of Particular Concern to the Jewish Community and to Other Minorities

Necessarily, the Committee will address itself to those issues of racial, religious and cultural freedom and opportunity that continue to concern many minorities in Canada. The Jewish community shares that experience, occupying as it does its own special historical place within that family of problems and perceptions. This area poses the dilemma as to how far the valued movement in recent years toward accepting the reality of a "multicultural Canada" can or should be given general or special constitutional recognition. Naturally, the Canadian Jewish Congress will be concentrating here on some matters of particular relevance to Jewish communal needs, its past experience and future expectations but it will also study the problem in its general application to all minorities living in a free society with a long voluntarist tradition. Language rights and educational rights in the two official languages of Canada are matters inviting the attention of the Committee as it searches for solutions in aid of this classical Canadian linguistic/education controversy. The members of the Committee intend to address themselves to this subject as Canadians but at the same time hope to relate it to the special problem of minority cultures, seeking, wherever practicable, appropriate measures to assure survival and fulfilment in the Canadian context.

3. Human Rights Matters Not Necessarily Lending Themselves To Constitutional Entrenchment or Statement

The Committee appreciates the fact that perhaps the larger segment of the human rights complex is to be found in varieties of protection that do not require entrenchment but only the effective operation of statutes or the general law of the land. The Criminal Code, principles of Common law and Civil law, anti-discrimination and equal rights provisions in statutes, provincial and federal - all of these and more constitute the essence of a general legal fabric that attempts to achieve a fair and free society. Hence it is the intention of the Committee to attempt to distinguish between those human rights matters requiring constitutional protection, as distinct from the large group of protections, safeguards and encouragement to be found in many other regimes of the Canadian legal and social system. The identification of these and possible suggestions for their enlargement and improvement may be useful for you and your colleagues as you attempt to make those difficult distinctions between rights requiring constitutional entrenchment and those that do not.

4. The International Obligations of Canada and Their  
Implementation In Canadian Law

The complex of Canada's obligations under international agreements to which it is a signatory and the large variety of human rights from I.L.O. conventions to the U.N. Charter, the U.N. Covenant on Political and Civil Rights and the U.N. Covenant on Social, Economic and Cultural Rights and certain resolutions of the U.N. Assembly and specialized agencies, make it necessary to examine the extent to which these obligations, legal and moral, have become part of the law of Canada. This analysis will help to demonstrate that the present Canadian constitutional system requires the provinces to implement many provisions of treaties and agreements, signed and ratified by Canada, where the subject matter lies within provincial jurisdiction, if the agreements are to become enforceable. The Committee will seek to study the present results of this constitutional reality as it touches upon the growing international network of human rights instruments to which Canada is a party by virtue of these many agreements and their ratification or by its "acceptance" of such other instruments as U.N. resolutions. Similarly, there are a number of important international instruments dealing with human rights where Canadian participation has not yet been undertaken for political or constitutional reasons. The Committee would hope to examine into this area and study the domestic effectiveness until now of federal and provincial implementation and administration of Canada's international obligations in the human rights field.

The Committee may find in the course of its work that other subjects and approaches are necessary and desirable. It well may be that you will find that this program does not address itself to certain matters with which you believe the Committee ought to be concerned. The Committee is anxious to have your suggestions.

For these reasons we would welcome your comments on the above program of study and also would be happy to have your views upon any other aspect of the Committee's role in assisting governments with the shaping of the Canadian future at this critical time.

Would you be kind enough to inform the Committee about the First Ministers' timetable so that the views of the Committee may be put to you in time to be of help in your deliberations. Should you plan to invite public representations the Committee would be pleased to learn of your intentions.

Yours sincerely,

Maxwell Cohen,  
Chairman

cc: Hon. Jean Chretien