

*The Canadian National Institute for the Blind*

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BRIEF SUBMITTED BY THE CANADIAN NATIONAL INSTITUTE FOR THE BLIND  
TO THE SPECIAL JOINT COMMITTEE OF THE SENATE AND OF THE HOUSE OF  
COMMONS ON THE CONSTITUTION OF CANADA, DECEMBER 1, 1980

INTRODUCTION

The CNIB, Canada's largest organization providing rehabilitation services to visually handicapped persons in Canada, has, as a goal, the legal, social and economic equality and equality of opportunity for visually handicapped persons. Its concerns, as set forth below, are applicable not only to the interests of blind and partially sighted Canadians, but to all mentally and physically handicapped Canadians, who number in the millions. This brief addresses only those handicapped-related issues arising in the proposed Charter of Rights.

THE PROBLEM

One of the worst problems confronting handicapped persons is discrimination imposed by able-bodied Canadians. The attitudes of well-intentioned but misinformed persons are often the greatest barrier to the full integration of handicapped persons into Canadian life.

Patronizing and discriminatory attitudes towards the handicapped has resulted not only in employment and housing discrimination, but also in legislative discrimination against the disabled. Jury statutes deny blind persons the right to serve as jurors, whether or not their blindness would affect their ability to serve. Marriage laws preclude some mentally handicapped persons from the right to marry. Immigration laws provide harsher standards for handicapped immigrants than for able-bodied ones. Handicapped people are sometimes denied minimum wage protection.

Laws which discriminate against handicapped persons are likely attributable to anachronistic and inaccurate public attitudes towards the handicapped. Accordingly, there is a pressing need for handicapped persons to have their right to equal treatment by the law safeguarded in the Constitution, entitling them to the same rights to equality enjoyed by the non-handicapped.

#### PROBLEMS WITH THE PROPOSED CHARTER OF RIGHTS

##### 1. The Equality Clause

Section 15 of the proposed Non-Discrimination Clause provides "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."

Since 'mental or physical handicap' is not listed as a protected class, this proposal ensures the handicapped persons shall remain disentitled to equality before the law. Legislative discrimination against the disabled will continue unchecked.

##### Recommendations:

- a) That "mental or physical handicap" be included in the non-discrimination section,
- b) Alternatively, the list of protected classes in the Equality Clause should be non-exhaustive, so that handicap can be read into the clause by the courts.

Section 15 is too similar to section 1(b) of the Statutory Canadian Bill of Rights, a provision the courts have repeatedly interpreted as failing to invalidate discriminatory legislation.

##### Recommendation:

- c) In section 15, the right to equality should be spelled out in strong language, unequivocally directing the courts that

discriminatory legislation is to be rendered inoperative.

2. The Exemption Clause

Section 1 of the proposed Charter of Rights provides "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 the parliamentary system of Government."

An exemption clause should not apply to either the right to an interpreter, (section 14) necessary for deaf and deaf-blind persons, or the right to protection from discrimination (section 15), since these rights should be absolute.

Recommendations:

- d) Certain rights enumerated in the Charter, including those in sections 14 and 15, should not be restricted by an exemption clause such as section 1,
- e) Alternatively, the wording of the exemption clause should be made much more specific and narrow than is provided in section 1. The present section 1 would likely be interpreted by the courts as rendering constitutional virtually all legislation passed in Canada, whether it infringed the fundamental rights listed in the Charter.

December 1, 1980