

SUBMISSION TO THE

Joint Clerks
Special Joint Committee on the Constitution of Canada
Postal Box 1044
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Parliament Buildings
Ottawa, Ontario K1A 0A7

On the "Proposed Resolution for a Joint address
to Her Majesty the Queen, respecting the
Constitution of Canada"

Submitted by:

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CANADIAN PARAPLEGIC ASSOCIATION



The Canadian Paraplegic Association is a voluntary organization founded in 1945 by Federal Charter whose objects are the social economic and physical well being of spinal cord injured Canadians in particular and of Canadian paraplegics and quadriplegics in general. The Association, through nine Provincial Divisions, has a mandate to serve an estimated 18,000 spinal cord injured persons in Canada and paraplegics and quadriplegics numbering approximately 25,000 to 30,000 people.

We have a membership of 3,500 across the country. We are directed by a National Board representing all regions of Canada, which includes both disabled and able-bodied members.

Our remarks on the proposed Constitution are confined to comments on the Canadian Charter of Rights and Freedoms as set out in Schedule B of the Constitution Act, 1980, Part I, for we feel that this is the part of the proposed legislation of particular concern to physically handicapped Canadians as distinct from Canadians in general.

In particular we draw your attention to Article 15, clause 1, which sets out the grounds on which everyone is to have the right to equality before the law and to equal protection of the law without discrimination. We emphasize that if the grounds of non discrimination are to be enumerated then "physical handicap" must be added to that enumeration of classes of persons against whom discrimination is proscribed. This should not preclude legislative distinctions reasonably and justifiably related to some bona fide social or economic amelioration of the condition of this group of persons or of affirmative action programs on their behalf.

We submit that it is particularly timely and appropriate that this group of persons be added to the enumeration of those against whom discrimination is proscribed, since if the plan for patriation of the Constitution of Canada proceeds on schedule as planned by the Government of Canada, it will occur in 1981, which has been declared by the United Nations as the International Year of Disabled Persons. This affords the Government and the Nation of Canada a unique opportunity to demonstrate leadership in the recognition of "physically handicapped" persons as full and equal persons indeed before the law and equally protected by the law in Canada.

Where reference is made in the present Canadian Human Rights Act to the rights of "the physically handicapped" these rights are limited to the specific area of employment, and, moreover, are not enforceable if they relate to access to premises.

Not all Provinces have Human Rights Acts which embrace the physically handicapped. Failure to include "physically handicapped" in the Canadian Charter of Rights and Freedoms would be a serious omission which could lead to a dilution of the protection received by the class of persons under those Provincial Acts where they are covered. Inclusion of this category of persons in the Canadian Charter could reinforce that Provincial Legislation which already includes them and hasten their full inclusion in the legislation of those provinces where they are not yet covered.

We anticipate that the Canadian Charter of Rights and Freedoms will have the force of primacy in the senior Courts of Canada.

We note that the interim recommendation of the Special Committee on the Disabled and the Handicapped has been to include specific protection for this group of persons if a Charter of Rights is included in a new Canadian Constitution. We concur with this position.

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Further, we concur with the Presentation by the Canadian Human Rights Commission to the Special Joint Committee on the Constitution of Canada, dated November, 1980 on The Canadian Charter of Rights and Freedoms and endorse it fully.

In summary, this Association is not expressing here any opinion on the merits of patriation of the Constitution or inclusion of a Charter of Rights per se. We are, however, quite clearly putting ourselves on record as stating that if the Canadian Constitution is to include a Charter of Rights and Freedoms, that "physical handicap" should be explicitly designated in Article 15, as a characteristic for protection.

November, 1980