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"ENTRENCHMENT OF BILL OF RIGHTS  
IN CANADIAN CONSTITUTION"

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National Black Coalition of Canada

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The National Black Coalition of Canada, a National organization of black people living in Canada with head offices in Toronto, Ontario, strongly supports the entrenchment of a Bill of Rights in the proposed new Constitution of Canada. This is not to say that we agree with all provisions of the proposals. We feel that some provisions are too vague and possibly lend themselves to interpretations widely at variance with the intentions of the drafters of the proposal. These doubts, and suggestions for changes, will be discussed later in this brief.

The National Black Coalition of Canada (hereafter labeled the N.B.C.C.) was organized in 1969 as a result of increasing concern regarding prejudice and discrimination against black people in this country. This was not a new concern,; black people have been subjected to various forms of discrimination since the early beginnings of Canada as a nation. It is possible that most Canadians are not aware of the fact that the first record of a black man in Canada dates back to 1628 when a young black youth was sold into slavery in what was then called "New France"; now the Province of Quebec. Although slavery did not develop on the scale that occurred in the United States. It was not until 1833 that this condition was officially abolished in Canada. Slavery ended in Canada as a result of an Act of the British Parliament abolishing slavery in all parts of the British Empire.

The history of prejudice and discrimination against blacks in Canada has been uneven and inconsistent. Blacks were welcomed in Canada when they were fleeing from the American slavery to freedom in Canada during the first half of the nineteenth century. It is estimated that more than 50,000 slaves were welcomed in various parts of Canada during that period. Most of the former slaves settled in Southern Ontario, the Niagara Peninsula, and in Nova Scotia. With the ending of the American Civil War, and the freeing of the slaves in that country, blacks found that they were no longer welcomed in Canada. Thousands were subjected to various forms of discrimination. Separate (segregated) schools were set up for black children in some provinces, notably Ontario and Nova Scotia. Blacks were denied employment and opportunities to buy property in some parts of the country. Employment opportunities were limited to the most menial jobs.

As a result of official and informal discrimination, thousands of former slaves returned to the United States during the latter half of the nineteenth century.

Prejudice and discrimination in Canada during this period however, was not restricted to blacks. The Ukrainians, Chinese, Japanese and East Indians also suffered varying degrees of prejudice and discrimination in the Canadian West. The Chinese Exclusion Act was passed by the federal Parliament. Legislation was enacted prohibiting

East Indians from entering the country except by "continuous passage", a ploy to effectively insure that Indians could not enter the country, since there were no ships sailing from India directly to Canada at that time. A "head tax" was imposed upon Chinese immigrants. Other formal and informal acts were passed to insure that Canada remained a "white mans country".

The result of these prohibitions, some official and others informal, was that very few non-white immigrants were permitted to enter the country until the end of the second world war. Thus, aside from the native peoples, the non-white population of Canada remained small and numerically insignificant. However, the democratic ideals which partly motivated the sacrifices necessary to pursue the war, set forces in motion which finally led to action against racial and ethnic discrimination. In addition, the need for manpower was a second factor which led to changes in the immigration act in 1946 and in 1967. These Acts removed some of the overt discriminatory aspects of official racism in Canadian law. The result of these changes was that hundreds of thousands of non-whites have entered Canada since 1967, and particularly during the early seventies. These new non-white Canadians have come from the West Indies, India, Pakistan, Hong Kong, Sri Lanka, Kenya, Uganda, Korea, Nigeria, the Phillipines, South America and other parts of the world.

Many of these new immigrants have had to face much of the same type of racial prejudice and discrimination that blacks had faced for centuries. Many of the newer groups, i.e. the Chinese and South Asian populations, have found it necessary to organize local and national organizations in order to protect their rights. Canadian blacks have found it necessary to organize against discriminatory practices in order to protect themselves against democratic practices.

Founded in 1969, the N.B.C.C. represents a national organization dedicated to protecting and advancing the rights of black people in Canada. The aims and objectives of the organization, as stated in its Constitution and By-Laws, are as follows:

- i) To ensure that the Black people of Canada achieve full social, cultural, political and economic participation in the shaping of a humane society, and that Blacks benefit fully from this society;
- ii) To eradicate all forms of discrimination in Canadian society;
- iii) To foster communication and a spirit of solidarity among Blacks in Canada regardless of national origin;
- iv) To foster communication and cooperation with Blacks of other nations in matters of common interest;
- v) To provide a basis for a national community response to crises and issues of general concern;
- vi) To provide a vehicle through which each Black Community may avail itself of the aid and advice of the most experienced, skilled and committed resource persons.

The N.B.C.C. is quite cognizant of the fact that the rights of all people are supposedly protected by a variety of provincial and federal acts. Each of the ten provinces, and the federal government have enacted Human Rights Codes. The codes, in varying degrees, offer legislative protection against a variety of types of discrimination, including discrimination on the basis of race, colour, national origin, sex, religion, and some other aspects. Human Rights Commissions investigate complaints, engage in education in Human Rights, and carry out other functions. The Canadian Bill of Rights, enacted in 1960, during the administration of the former Prime Minister, the Right Honourable John Diefenbaker, was also another of the legislative protections against racial and other types of discrimination in Canada.

The fact is, however, that in spite of these legislative enactments, the problem of discrimination on the basis of race, sex, national origin, etc., still continues. With one or two exceptions, the various provincial Human Rights Codes either possess very little "teeth", or to put it mildly, are given so little staff and resources, that they make little impact on the incidence of discrimination in their areas of jurisdiction. The number of complaints, particularly those based upon discrimination in employment, continues to increase in most areas. The impact of the Canadian "Bill of Rights" upon racial and other forms of discrimination, needs no extended discussion: its practical value is virtually non-existent.

We thus observe with amazement the positions taken by the provincial premiers who state that the provincial legislatures are best able to protect the rights of Canadian citizens. While we have noted with some satisfaction, the work of the newly established Canadian Human Rights Commission, we have as indicated above, little reason to have confidence in most provincial governments. For example, the limited powers given to the Ontario Human Rights Commission, by the government of Ontario has led to increasing frustrations and demands that the code be greatly strengthened and that the resources of the Commission be greatly expanded. The provincial government has, to this date, refused to enact amendments strengthening its Code. Neither has the Ontario government given its Commission the financial and staff resources it so badly needs.

The National Black Coalition of Canada thus reiterates its strong support of the principle of entrenching a Bill of Rights in the proposed new Constitution of Canada. Our primary function, as indicated in our Constitution, is the protection and advancement of the rights of black people in Canada. While interested in all aspects of the proposed document, we will restrict our discussion to the areas of primary interest, that is, the question of fundamental freedoms, basic democratic rights, legal rights, and non-discrimination rights.

FUNDAMENTAL FREEDOMS:

While we are in substantial agreement with the apparent intent of Section 1, regarding "fundamental freedoms", we have some doubts about these rights being subjected to "reasonable limits". Frankly, we believe this limitation is too vague, and should be either deleted or substantially changed. We would agree with the Canadian Civil Liberties Association that any limitation provision should "at the very least", contain a "necessity test". In other words, any limitations on the fundamental freedoms should be based on limits which the government of the day can demonstrate, is necessary to the achievement of certain valid government objectives...i.e., Affirmative Action Programmes on behalf of minorities with a history of systematic discrimination. Affirmative Actions to redress these disadvantages are, in our opinion, valid government objectives.

We strongly support the inclusion of the concept of "freedom of speech" in a new Canadian Constitution. It is crucially important that those of us who have been subjected to informal and official discrimination have every right and opportunity to express our abhorrence to this undemocratic practice. We would not want to see this right limited in any substantial way. At the same time, we recognize, as we are sure that you do, that freedom of speech is not an absolute. While the American Constitution clearly states that "Congress shall make no law" restricting freedom of speech, in practice, it has been recognized that in

practical terms, some limits must be set upon some expressions at some times, and in some places. Thus, the American doctrine of "clear and present danger". This doctrine suggests that the right of free speech does not permit an individual to falsely yell "fire!" in a crowded theatre if that act leads to people being trampled to death.

We would suggest that freedom of speech must also be limited when individuals and groups preach hate and the destruction of other individuals and groups, whether based upon the Nazi doctrine of racial superiority, national origin or other factors. Attempts to destroy a whole people, or genocide, are too much a part of recent history for us to view with equanimity the "hate messages" and other activities of some groups in Canadian society. It is of course recognized that this is a sensitive and difficult area of consideration. But it is essential.

#### DEMOCRATIC RIGHTS:

We believe that all citizens should without restrictions, have the right to vote and to participate in government. All citizens and residents pay taxes and support the government. If these rights are to be taken away, it should be for very specific reasons. The terms "unreasonable distinction and limitation" are too vague. Any limitation of these rights must be for very substantial and clearly stated reasons.



Likewise, we are worried about the limitation regarding elections "in time of real or apprehended war" etc. Whereby Parliament or the legislatures may continue for more than the normal five year term. Websters New Collegiate Dictionary indicates that the term "apprehend" means: "to become aware of or to perceive" or "to grasp with understanding". To enable governments to remain in power beyond their normal terms is a very serious matter, and should not be permitted in the absence of "clear and present danger...not mere apprehension or war or other crises. The misuse of the War Measures Act is still too much in our minds for us to agree with such sweeping powers on the basis of mere apprehension.

LEGAL RIGHTS: (Sections 7, 8, & 9)

Here again, the language is too vague. Is the language of the proposal based upon some concept of "fundamental" justice derived from some idea of "natural law"? The principles of fundamental justice, whatever the term means, should be spelled out in precise terms. So should the concept of "procedures established by law". There is nothing magic about laws: It is quite possible that procedures established by law may be themselves contrary to due process and other concepts of democratic rights.

Section 15 - NON-DISCRIMINATION RIGHTS:

This Section, while obviously well intended, is much too limited. In fact, by restricting its coverage to "race, national or ethnic origin, colour, religion, age or sex", it is less comprehensive than the Canadian Human Rights Code. Neither does it reflect the comprehensiveness of the United Nations Charter on Human Rights. Either the provision should be extended to include marital status, the handicapped, and other disadvantaged groups, or discrimination should be, as suggested by the Canadian Civil Liberties Association, prohibited **on any** unreasonable grounds. Reasonable grounds would, as indicated earlier in this Brief, include Affirmative Action Programmes designed to redress a history of disadvantage based upon previous discrimination.

CONCLUDING COMMENTS:

The foregoing comments are respectively submitted as an attempt to improve a document which we strongly support in principle. We believe that the suggested changes would greatly improve the document. We agree that it is time that the government of Canada clearly take the step of breaking the last vestiges of colonialism and assume responsibility for its own institutions. We would hope, however, that this important step can be taken in a spirit of cooperation rather than one of bitterness and anger. The Canadian

policy of multiculturalism clearly suggests that peoples of various races, colours, national origins, etc., can live and work together in peace and harmony. This goal has not been attained. Granting the existence of some degree of prejudice and discrimination based on race and other factors, this country is nevertheless making considerable progress. We hope that the black and other non-white population of Canada will be given the opportunity to develop their skills and abilities and make their contributions to Canadian society in freedom, and with respect. This freedom and respect must be the defining characteristic of a mature and caring society in which prejudice and discrimination against racial, ethnic and other minorities have no place.

Two additional points must be made. First, we see nothing in the proposed Constitution, including its preamble, clearly indicating the government's commitment to the protection of the multicultural nature of present Canadian society. While we do not quarrel with the present emphasis of English and French as the two official languages of the country, constitutional protection must be given to the preservation of the multi-ethnic nature of the Canadian society. It should not be forgotten that roughly one-third of the population of Canada is neither English nor French.

Secondly, the lack of attention to the rights of the Native peoples is a glaring omission. It is clearly apparent that both the federal and provincial governments are refusing to honour long standing treaty rights of our native people, particularly when valuable minerals are located on their lands guaranteed by treaty. It is a sad picture to witness the refusal of the federal government in cooperation with huge multinational oil, mining and other resource industries to honor treaties, presumably because these groups wish to seize their lands. A new constitution will be a mockery unless the treaty rights of the Native people are clearly honoured and enshrined in the new document.