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SUBMISSION  
TO THE  
JOINT COMMONS-SENATE COMMITTEE  
ON THE CONSTITUTION  
FROM  
THE SASKATCHEWAN ADVISORY COUNCIL  
ON THE STATUS OF WOMEN

DECEMBER 1980

" DANS UN PAYS COMME LE NÔTRE  
IL FAUT QUE TOUS LES DROITS  
SOIENT SAUVEGARDES QUE TOUTES  
LES CONVICTIONS SOIENT  
RESPECTÉES".

GEORGE ETIENNE-CARTIER  
(FATHER OF CONFEDERATION)

## PREFACE

The Saskatchewan Advisory Council on the Status of Women is pleased to make the following submission to the Joint Committee on the Constitution. We would like to begin by commending the Committee for extending the deadline of the hearings, thus allowing additional input (from concerned Canadians) to this important process.

The Saskatchewan Advisory Council on the Status of Women is a body whose mandate is advisory to the Government of Saskatchewan on women's issues. Views expressed in this submission reflect a Saskatchewan feminist perspective and not necessarily that of any federal advisory groups on women's issues, notwithstanding that the ultimate objectives of most women's interest groups are similar.

There are eight members of the Saskatchewan Advisory Council in addition to the Chairperson. Our members are drawn from rural, northern and urban Saskatchewan and from homemakers, the legal, teaching and social work professions, the trade union movement, the agricultural environment and the University. The Advisory Council is appointed by the Government of Saskatchewan and the Chairperson reports to the Minister responsible for the Status of Women.

We support, in principle, the patriation of the Canadian Constitution. We recognize that, while the British North America Act has served Canada well for over one hundred years, there are developments and changes in our society that could not possibly have been anticipated by the Fathers of Confederation. Therefore, there is a need for change, a need for modern realities to be recognized and provided for constitutionally, and we support the principle of this need for change. Resources, communications, language rights, minority rights and, in particular, the status of women are factors of our twentieth century society which must be addressed in a new Constitution.

The status of women is obviously the primary concern of the Saskatchewan Advisory Council. Women compose a majority of the total population and will, therefore, be affected by all elements of a new Constitution. We feel, however, that the status of women might be most directly improved, or diminished, by an entrenched Charter of Rights. The Saskatchewan Advisory Council has some concerns about entrenchment, and about the Charter of Rights as proposed in the Resolution and it is upon these concerns we wish to focus our submission.

#### ENTRENCHMENT

Our uneasiness about entrenchment stems from a fear that Canadians may become locked into a Charter of Rights that is too vague, far too open to judicial interpretation, and if subsequently found wanting, extraordinarily difficult to alter regardless of which amending formula

is adopted.

If the proposition is that entrenchment of rights is favoured as a means of ensuring protection of minorities, then to validate such a proposition, it is fair to look to the United States where fundamental rights have been entrenched in a Constitution for several hundred years. With all due respect, we suggest that American women, blacks and other minorities have historically received no more protection of their rights than has been the case in Canada under our Parliamentary system of Government. For example, American women are fighting, what appears to be at best in a holding pattern, to obtain an equal rights amendment to their Constitution to grant equality to women, and this in 1980. Blacks in America had to wait until the 1964 Civil Rights Act for racial discrimination to be banned. Japanese Americans had their civil rights grossly violated during the Second World War.

We would suggest that an inherent truth about the Canadian psyche is a fundamental respect for the dissident. It should be recognized that minorities in Canada are more and more effectively organizing themselves into lobby groups to obtain legislative recognition of their rights at the provincial and federal levels. We live in a rapidly changing society and our consciousness of social justice is constantly expanding to reflect this. It might well be preferable to retain our traditional methods of legislating rights so that changes, when necessary, might be expeditiously addressed.

We have grave doubts that elegant legal challenges to obtain rights based on constitutional principles are realistic options

available to many women, because of the expense of such proceedings. We are certainly not suggesting that our legislators have always been champions of minority rights and that the courts could not be. However, we would like to point out that all Canadians do have equal access to their legislators through the exercise of their franchise. Disgruntled voters have the power to change Governments. As citizens, we do not have such access to the judiciary - we neither elect nor select our judges and it is significant how few women there are in their ranks, and there are no women at all in the highest Court in the land.

#### THE PROPOSED CHARTER OF RIGHTS

Your Committee has heard many voices from all parts of Canada in the course of your deliberations. Many have spoken eloquently about the Charter of Rights, its weaknesses and strengths.

We share the concerns, often expressed to you in recent weeks, about the inherent weakness of Section I, which reads:

*"1. 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."*

It seems to us that if a Charter of Rights is to be entrenched in a Constitution then the guarantee of its protection should be inviolable. Therefore, all of the wording in Section I that follows the phrase "set out in it" is at best superfluous, at worst, deleterious to the intent of the rest of the Charter.

The Saskatchewan Advisory Council on the Status of Women has

some specific concerns about Section 7 of the Charter, "the right to life" etc. and Section 12, "freedom from cruel and unusual punishment. We believe that these clauses could ultimately be legally used to support the overturning of any positive legislation that presently permits some access to legal medical services in matters of reproduction.

Section 15, which deals with equality is, we submit, vague with respect to the potential interpretation of it. It is also deficient in that it neglects to provide protection to a sizable portion of our society, the disabled people of Canada.

From the feminist perspective, the Charter of Rights does not address the fundamental reason for the inequality of Canadian women, namely, the economic inequity which serves to maintain the unequal status quo. You might reasonably ask whether a social document such as a Charter of Rights should be concerned with economic matters. We submit that the fact that women in our country earn about 60 cents for every dollar earned by men is not just a tedious statistic, it is a fundamental social injustice and must be recognized as such. The fact that, as a society, we pay lip service to the importance of the role of wife and mother yet most shamefully treat older women who have lived that role is a social disgrace that requires redress. Women are among the poorest people in our society and they are represented in all other disadvantaged groups.

Although we have reservations about entrenchment per se, we would hope that any Charter to be so entrenched would recognize the contribution to our society that women have made. We would hope that this recognition would be coupled with a desire to redress the societal

inbalance whereby fifty percent of the population is less equal in most areas of life than the other fifty percent. If the Charter of Rights is to have any real social meaning for the women of Canada, it must categorically accord to them the right of equality with men in all relevant aspects of their lives.

Your Committee has a unique and historic opportunity to shape the course of Canadian society by the amendments to a new Constitution you will propose to the Government. The Charter of Rights might ultimately be one of two things. It might represent, as it is presently worded, a dubious recognition that some basic rights and freedoms should be common property to most Canadians. On the other hand, it might be, if the commitment to change is genuine, a vigorous statement of rights unequivocally accorded to Canadians that would be an enviable model for the rest of the world. Women, in particular, will be closely watching this process to determine whether, for them, the Charter of Rights will be a band-aid for the past or a blue-print for the future.

THE SASKATCHEWAN ADVISORY COUNCIL  
ON THE STATUS OF WOMEN RESPECTFULLY  
ASKS FOR YOUR EARNEST CONSIDERATION  
AND SUPPORT FOR THE FOLLOWING  
PROPOSAL.



THE SASKATCHEWAN EQUALITY FOR WOMEN PROPOSAL

The Saskatchewan Advisory Council on the Status of Women proposes that the following new section be added to the Charter of Rights, to be entrenched in the Canadian Constitution, under a heading:

RIGHTS OF WOMEN

- (1) EVERY WOMAN HAS THE RIGHT TO ;  
EQUALITY IN, AND BEFORE, THE LAW.
  
- (2) EVERY WOMAN HAS THE RIGHT TO ;  
SOCIAL AND/OR ECONOMIC EQUALITY IN THE FOLLOWING:
  - EMPLOYMENT
  - LEGAL MARRIAGE
  - COMMON LAW MARRIAGE
  - JUSTICE
  - MEDICAL AND SOCIAL SERVICES
  
- (3) IF SUITABLY QUALIFIED, EVERY WOMAN HAS THE RIGHT TO  
BE APPOINTED TO THE JUDICIARY AT ALL LEVELS, AND TO  
ANY BOARD OR COMMISSION OF THE FEDERAL GOVERNMENT.

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