

December 19th, 1980.

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

Dear Sirs,

At a meeting on December 17th, 1980, the Board of Directors of the Elizabeth Fry Society of Toronto asked me to pass on to you the following comments and recommendations concerning the proposed resolution respecting the Constitution of Canada: -

THE CANADIAN CHARTER OF RIGHT AND FREEDOMS:

Section 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."

RECOMMENDATION:

That we advise the Committee that we deplore the limitation on rights and freedoms as presently drafted in section 1 because it is far too broad and undefined. If any limitation is desirable it ought to be more narrowly defined.

Section 3

"Every citizen of Canada has, without reasonable 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."

COMMENTS:

The right to vote is presently denied to an inmate of any penal institution (S 14 (4) Canada Elections Act, R.S.C. C 14 (Supp.)) The wording of S. 3 is not such that it will automatically provide the right to vote to an inmate. We would like the Committee to consider why, and when and how the right to vote should be denied. Section 3 should be drafted to reflect these criteria.

executive director



Gillian Sandeman

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cont'd comments

The Committee should also consider what the implications of a criminal conviction are - do they include the denial of fundamental rights?

RECOMMENDATION:

That the wording of Section 3 be amended so that being held in custody by order of the court would not be a reasonable distinction or limitation.

Section 7

"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."

COMMENTS:

The Elizabeth Fry Society is strongly opposed to the re-introduction of capital punishment. The section as drafted will allow for the reinstatement of the death penalty, as a person could be deprived of the right to life if the denial is done, "in accordance with the principle of fundamental justice."

RECOMMENDATION:

That Section 7 be amended so that under no circumstances could the death penalty be imposed.

Legal Rights

10. 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.

11. 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;

cont'd legal rights

- (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 for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.

COMMENTS:

The rights of accused persons may be rendered meaningless to some accused persons if they are not informed of those rights.

RECOMMENDATION:

The right "to be informed" in paragraph (a) of section 10 be expanded to include the right to be informed of the other legal rights set out in the constitution.

Section 12

"Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

COMMENTS:

The difficulty with this section is that the courts have rendered the concept of "cruel and unusual treatment or punishment" almost meaningless. The following list provides you with a limited number of examples of punishments which have been held not to offend this provision (right presently exists in S2 (b) of the Bill of Rights):

- (1) the death penalty (Miller & Cockriell v R (1977) 38 C.R.N.S. 139 (S.C.R.));
- (2) a 7 year minimum sentence for the importation of narcotics into Canada [(R v Shand (1976) 35 C.R.N.S. 202 (Ont.C.A.)];
- (3) preventive detention for dangerous offenders [(ex parte Mattricks (1974) 15 C.C.C. (2d) 213 (S.C.C.)];
- (4) administrative segregation (solitary confinement) [R v Bruce et al (1977) 36 C.C.C. (2d) 158 (B.C.S.C.)]; and
- (5) whipping [(R v Dick (1965) 1 C.C.C. 171 (Man.C.S.)].

One suggestion which might provide this proposition with something more than rhetorical meaning would be to delete the word "and". The basis of this argument is that the Supreme Court has held that in order for a punishment or a treatment to offend this proposition it must be both cruel and unusual. This method of statutory interpretation is inappropriate in the context of discussion of human freedom and dignity. Rather, Section 12 deals with (and ought to be interpreted as) a general or universal concept of human rights and dignity.

cont'd Section 12 / comments

If it is agreed that it should be applied to reflect these values, then the wording will have to be altered, as the courts will continue with the present (and insensitive) application of this provision.

The Board of the Elizabeth Fry Society has no specific recommendation to make in regard to this section, but wishes to express its concern that the present interpretations of the section do not allow for sufficient flexibility.

Section 14

"A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted has the right to the assistance of an interpreter."

COMMENTS:

Is the wording of this section broad enough to include the hearing impaired person?

RECOMMENDATION:

The section be amended as follows:

".....who does not understand, speak or hear the language....."

Section 15

- (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 its object the amelioration of conditions of disadvantaged persons or groups.

Subsection 1

COMMENTS:

There are two aspects which need to be addressed in this subsection:

First: "Everyone has the right to equality before the law.....".

To assess the effectiveness of these words in protecting rights, one only has to ask Jeanette Laval and Yvonne Bedard how the right to "equality before the law" assisted them in retaining their status as Indians. The effect of the section of the Indian Act in issue was to discriminate against Laval and Bedard because of their sex. It appears that once a law is passed, the court's concern is with the administration of the law, not the law itself.

RECOMMENDATION:

That the wording be changed to "equality under the law"

cont'd Subsection 1

Second: the subsection lists the prohibited grounds of discrimination (race, national or ethnic origin, colour, religion, age, sex).

RECOMMENDATION:

That the grounds should be extended to include marital status, sexual orientation, physical and mental handicap and political belief.

Subsection 2

COMMENTS:

The Board of the Elizabeth Fry Society expressed concern that, although the Charter declares affirmative action programs legal as they apply to "disadvantaged persons or groups", the existing wording leaves it open for challenges to affirmative action programs for women or other disadvantaged groups on the grounds that they are not disadvantaged."

RECOMMENDATION:

That the wording of the subsection be revised to prevent such challenges.

Section 24

The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the native peoples of Canada.

COMMENTS:

The "rights and freedoms" presently held by Indians are not to be affected by the Charter. This, in effect, entrenches the Indian Act, including the concept of unequal rights for native women: Under S. 11 "status" women who marry non - status men lose their rights to be band members, while the status men who marry non - status women do not. This section of the Constitution Act would seem to perpetuate that discrimination.

RECOMMENDATION:

That the Constitution Act be redrafted in such a way as to ensure the equality of all women with men and to override the existing discrimination in S. 11 of the Indian Act.

Section 26

"No provision of this Charter, other than section 13, affects the laws respecting the admissibility of evidence in any proceedings or the authority of Parliament or a legislature to make laws in relation thereto."

COMMENTS:

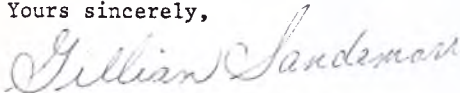
This section has serious implications for anyone charged with a criminal offence. Basically it would allow for the admissibility of evidence which was obtained by methods which were in contravention of the Bill of Rights. This is presently the situation in Canada and has been understandably challenged from a number of quarters. Two examples:

1. A person confesses to a crime as a result of "improper" police interrogation techniques: The statement is inadmissible in evidence, but any other evidence which can be located as a result of the statement is admissible e.g. the whereabouts of the weapon, or stolen property etc.
2. A person demands the right to speak to council before being questioned by the police. This demand is not complied with and certain evidence is obtained as the result of police investigation. This evidence is admissible.

The Board of the Elizabeth Fry Society wishes to express concern over the abuses that the interpretation of this section could lead to.

I hope that these comments and recommendations will be useful to you in your deliberations.

Yours sincerely,



Gillian Sandeman,
Executive Director.



GS/jp