

THE CANADIAN ASSOCIATION FOR THE MENTALLY RETARDED  
BRIEF TO THE SPECIAL COMMITTEE OF THE HOUSE OF COMMONS AND SENATE  
ON THE RESOLUTION ON PATRIATION OF THE CONSTITUTION OF CANADA

From

THE CANADIAN ASSOCIATION FOR THE MENTALLY RETARDED

We are particularly pleased to read, in several of the articles of the Charter dealing with legal rights, provisions which require fundamental principles of justice to be applied in cases where any individual may be deprived of personal liberty. Specifically, each such provision begins with the word "Everyone" or "anyone". These are guarantees which a constitutional charter of rights quite properly extends to all citizens. The intention of our resolution on the entrenchment of human rights is the qualification of Canada was not to secure special rights for some categories we represent, but to obtain a guarantee that all Canadians are entitled to certain basic conditions which are an essential part of a civilized and democratic society.

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November 10, 1980

BRIEF TO SPECIAL COMMITTEE OF THE HOUSE OF COMMONS AND SENATE  
ON THE RESOLUTION ON PATRIATION OF THE CONSTITUTION OF CANADA

From

THE CANADIAN ASSOCIATION FOR THE MENTALLY RETARDED

Introduction

The Canadian Association for the Mentally Retarded (CAMR) wishes to express its strong approval of the inclusion of a Charter of Rights and Freedoms in the Constitution. At its Annual General Meeting in June, 1980, CAMR passed a resolution to that effect. We consider this to be a measure which promises significant protection of the rights of our fellow citizens who live with a handicap.

We are particularly pleased to read, in several of the articles of the Charter dealing with legal rights, provisions which require fundamental principles of justice to be applied in cases where any individual may be deprived of personal liberty. Appropriately, each such provision begins with the word "Everyone" or "Anyone". These are guarantees which a constitutional charter of rights quite properly extends to all citizens. The intention of CAMR's resolution on the entrenchment of human rights in the Constitution of Canada was not to secure special rights for those Canadians we represent, but to obtain a guarantee that all Canadians are entitled to certain basic conditions which are an integral part of a civilized and democratic society. In our view, this would mean that those who live with a mental handicap would be legally entitled to enjoy the same basic conditions of life which everyone else values.

The Need for Further Positive Assurances

It remains our contention that these "basic conditions of life" ought to be defined in some detail in the constitutional Charter of Rights and Freedoms. We strongly endorse the list of fundamental freedoms in Section 2. The declarations of democratic rights (Sections 3 to 5), mobility rights (Section 6) and language rights (Sections 16 to 23) are likewise valuable additions to the overall list of the "basic conditions".

In keeping with the CAMR resolution of June, 1980, we would ask that the list be extended further to include certain positive rights to share fully in the opportunities for the protection and enhancement of the quality of life which our society provides. We are speaking now of the following basic rights:

1. the right to life and health care,
2. the right to adequate food, clothing and housing,
3. the right to protection and assistance to the family,
4. the right to appropriate education,
5. the right to an opportunity to work and just and favourable conditions of work,
6. the right to participate in trade unions, and
7. the right to social security.

These rights are all contained in the International Covenants on Human Rights, to which Canada is a state party by virtue of the ratification of the Covenants by the Federal Government and all the provinces. Since our country is already committed internationally

to guarantee these positive rights, it seems highly appropriate to us that they should be included in our domestic law by entrenching them in the Constitution. The Canadian Association for the Mentally Retarded urges your Committee and your colleagues in the House of Commons and Senate of Canada to include declarations of these rights in the constitutional Charter of Rights and Freedoms.

Inclusion of "Handicapping Condition" in Non-discrimination Rights

There has been a tendency for human rights legislation to isolate certain groups whose human rights have been in special jeopardy, and to stipulate that any discrimination against such persons on the grounds of their status as members of any of these groups is unlawful. Although our own preference is for universal statements of rights for all citizens, we acknowledge that specific prohibition of discrimination against named groups has been included in all the federal and provincial human rights codes in Canada and the declarations and International Covenants drawn up by the United Nations Organization. Section 15 of the proposed Charter of Rights and Freedoms follows the general pattern of these precedents. What we wish to convey to your Committee is our belief that, if it is found to be necessary to name specific grounds upon which discrimination is to be prohibited, then "handicapping condition", whether physical or mental, should be listed among those prohibited grounds. Hundreds of thousands of Canadians are affected by some significant degree of handicap. Time and again, the existence (or the perceived presence)

of such condition has resulted in these persons being denied the services and liberties which the law provides for other citizens.

The need for legislative protection of the human rights of persons who are handicapped has begun to be recognized by Canadian legislators. The Province of Quebec has amended its Charter of human rights and freedoms to include a prohibition of discrimination based on "the fact that [a person] is a handicapped person or that he uses any means to palliate his handicap". "Handicap" is interpreted to include both mental and physical handicaps. Some provinces have extended similar protections against discrimination based on physical disability. The federal Human Rights Code now protects the employment rights of persons with a physical handicap. The 1979 Annual Report of the Canadian Human Rights Commission includes a recommendation to Parliament that the Code be amended to include persons with a mental handicap and to extend the coverage of the anti-discrimination provisions beyond the area of employment. Several provinces are currently working on amendments to their human rights legislation to introduce similar provisions. It is our understanding that these amendments will be introduced in the Legislatures of Ontario and New Brunswick during the period when your Committee will conduct its hearings. At least 42 of the 50 states in the United States now list physical and/or mental disability in their anti-discrimination statutes.

The growing extent to which handicapping conditions are being recognized as unlawful grounds of discrimination indicates

the degree to which people are becoming aware of the serious injustices which have been experienced by people who live with a handicap. That this recognition of a real need for statutory protections has come at a relatively later stage in the development of human rights law is not an indication that such protections are of less importance than those accorded to other disadvantaged groups a decade or more ago. Quite the contrary -- the injustices perpetrated against people who are handicapped have continued because of the position of powerlessness to which such persons have been relegated. And it is this same powerlessness which has prevented people who are handicapped from making their just cause widely known and understood in our society.

It has been said that the quality of a society can be assessed in terms of the manner in which it deals with its weakest members. Until recently, the prevailing mentality has been that the best thing society can do for its handicapped members is to "protect" them, often in ways that have resulted in their being segregated from the main streams of community and national life, depriving them of opportunities and magnifying the perception of "differentness" which most people have of them. Now we are beginning to realize that it is not people who need to be protected so much as their basic human rights. If human rights are protected, then persons, whether handicapped or not, have a better chance to experience the dignity and autonomy which are the essential accompaniments of citizenship in a democratic nation. When people who had suffered deprivations as a result

of discrimination because of race, sex, and other status were beginning to assert their rights to equality before the law, the best that was offered to handicapped people was an attitude of paternalism which delayed the process of recognizing that their cause is also an issue of human rights. Now that recognition has extended across Canada, and the time has come when it can be acknowledged in a renewed and patriated Constitution.

We urge the members of your Committee to examine Section 15 of the proposed Charter of Rights and Freedoms very carefully, and to send back to your respective Houses a recommendation that "handicapping condition" be added to the list of those conditions which call for protection of the law in order to eliminate discrimination.

### Summary

- CAMR strongly favours the entrenchment of a Charter of Rights and Freedoms in the Constitution of Canada.
- CAMR believes the present draft Charter can be improved substantially by the inclusion of additional social, cultural and economic rights in keeping with Canada's obligations under the International Covenants on Human Rights.
- CAMR joins with other Canadian organizations which represent the interests of handicapped persons in urging that Section 15 of the draft Charter be amended by adding the words "handicapping condition" to the list of

grounds upon which discrimination before the law is to be prohibited.

...the law is intended to prohibit discrimination on the grounds of race, color, religion, sex, or national origin.

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CANADIAN ASSOCIATION FOR THE MENTALLY RETARDED  
ASSOCIATION CANADIENNE POUR LES DEFICIENTS MENTAUX

New Brunswick Division / Division du Nouveau-Brunswick

November 24, 1980

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Joint Clerks  
Special Joint Committee on the  
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Gentlemen:

On behalf of C.A.M.R. and persons who are mentally retarded in New Brunswick, I wish to respond to the proposed resolution respecting the Constitution of Canada.

We in C.A.M.R. have become increasingly convinced of and impressed by the potential of persons who are mentally retarded. As opportunities have developed for them they also have developed; they have become accepted and contributing members of their communities; their accomplishments have repeatedly surprised even those who thought they had a high opinion of them.

There have been, however, examples of discrimination. Some ordinary services were not accorded them. Some professionals, confident in their ability to recognize someone as "retarded", responded to adults as if they were children. We therefore began a study of such experience in New Brunswick and submitted a brief to the Minister of Labour, Hon. Mabel DeWare, February 22, 1979. Mrs. DeWare responded that she has requested a review of provincial legislation and indicated that as an interim measure persons considered mentally retarded would be included under "physical disability" in the Human Rights Code of New Brunswick. A copy of our brief, and of Mrs. DeWare's letter can be available.

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At the time of our brief, we had not found a satisfactory term or definition by which persons who are called mentally retarded should be designated in the Act. It had been suggested that the term "physical disability", one of the prohibited grounds of discrimination, be expanded to "physical and mental disability". It has also been suggested that rather than expand the term, we might shorten it to the simple word "disability", which could then be defined in terms of behaviour or perception.

In keeping with this direction, we would in many ways prefer that discrimination simply be barred by the Canadian Constitution, without any list of grounds. We believe that there should be no discrimination. Period.

But if there must be a list of persons against whom there must be no discrimination, we ask that persons who are mentally retarded be included in that list. We stated this point in our submission to the Special Committee on the Disabled and the Handicapped on September 4, 1980. A copy of our submission is available.

We have also been part of national C.A.M.R. discussions, which lead, in June 1980, to two resolutions, asking for the amendment of human rights legislation to prohibit discrimination against anyone for whatever disability, and for entrenchment of rights in the anticipated constitution. C.A.M.R.-N.B. supported both these actions, in its statement to the Special Committee.

We have encountered as well some concerns and a few instances of people saying that if people who are mentally retarded have the same rights as others, they should have no additional supports or services. This is obviously an inappropriate and negative application of the concept of rights, and we ask that such negative application of the rights be considered a form of discrimination. Rights must not be used to limit opportunities or development.

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The discussion of the Canadian Constitution and the Proposed Resolution appeared to us to be a potential landmark in Canada's development and in the rights of persons. On more thorough reading, it appears to offer less than is currently offered, and considerably less than Canada has endorsed in the past in Human Rights legislation, and especially in the United Nations Declaration of the Rights of Mentally Retarded Persons.

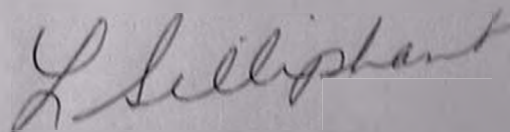
We believe that Canada's Constitution should enshrine no less rights than are accorded elsewhere, in legislation and international agreements.

We therefore request and recommend that in regards to the Constitution of Canada:

1. serious consideration be given to simply barring discrimination against all persons;
2. the areas in which discrimination is barred be extended to include all areas in which such discrimination is currently barred in Canada, or in which Canada has previously given its agreement that discrimination be barred;
3. if a list of grounds on which discrimination be barred is required, persons who are mentally retarded be included, preferably with the simple use of the word "disabled" or "handicapped" or by the more extended phrase "physical or mental disability (or handicap)";
4. human or civil rights not be interpreted in such a way as to be a barrier to one's development, so long as this development does not infringe on another's equivalent development.

If you wish any of the documents to which I have referred, or if you wish any further elaboration, I will be pleased to respond.

Yours sincerely,



Lorraine Silliphant  
President