



Canadian Association for the Prevention of Crime
Société canadienne pour la prévention du crime

55 Parkdale, Ottawa, Ontario, Canada K1Y 1E5, (613) 725-3715
Formerly: Canadian Criminology and Corrections Association Anciennement: Société canadienne de criminologie

Patron —

His Excellency The Right Honourable
Edward Schreyer, C.C., C.M.M., C.D.,
Governor General of Canada

Patron —

Son Excellence le très honorable
Edward Schreyer, C.C., C.M.M., C.D.,
Gouverneur général du Canada

December 1, 1980.

The Honourable Senator Harry Hays and
Mr. Serge Joyal, M.P.,
Co-Chairmen, Special Joint Committee
of the Senate and House of Commons
on the Constitution of Canada,
Houses of Parliament,
Ottawa, Canada.

Dear Sirs:

The Canadian Association for the Prevention of Crime strongly supports the move to entrench a Canadian Charter of Rights and Freedoms in Canada's Constitution. We believe, however, that amendments to the draft being considered by your Committee are essential if the resulting Charter is to have maximum effect.

The Canadian Association for the Prevention of Crime is a national voluntary body with the twin objectives of reducing the crime problem and promoting good criminal justice services for all Canadians. In our preventive role we are interested in all sections of the proposed Charter that have implications for improving the lot of Canadians who suffer under social handicaps. However, because of time pressures, we are limiting our presentation to your Committee to those sections of the proposed Charter that deal with Legal Rights.

PROPOSED AMENDMENTS TO THE CHARTER

We agree with all provisions of the proposed legal rights with the exceptions set out below.

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 of government.

CAPC recommends deletion of this Section. It places the effectiveness of all Sections that follow in doubt and would make problematic their capacity to nullify conflicting legislation. Deleting this Section would remove any doubts as to the application of the entrenched rights and freedoms to conflicting legislation and to other actions by governments or their agents.

Section 8

Everyone has the right not to be subjected to search and seizure except on grounds, and in accordance with procedures, established by law.

Section 9

Everyone has the right not to be detained or imprisoned except on grounds, and in accordance with procedures, established by law.

Section 11(d)

Anyone charged with an offence has the right....
(d) not to be denied reasonable bail except on grounds, and in accordance with procedures, established by law;

We support the intent of these Sections which is to make arbitrary government action inadmissible. However, we are of the opinion that the phrase "except on grounds, and in accordance with procedures, established by law" would make the relevant provisions meaningless. Such exceptions imply that any legislatively authorized grounds or procedures can override the essential provisions of fundamental freedoms which the above Sections are trying to protect.

Section 10(b)

Everyone has the right on arrest or detention....(b) to retain and instruct counsel without delay;

We suggest additionally entrenching the right to free legal aid to be available to the accused with insufficient financial means in criminal proceedings.

Section 11(d)

Anyone charged with an offence has the right....(d) not to be denied reasonable bail except on grounds, and in accordance with procedures, established by law;

We suggest adding "own recognizance" as an alternative to "reasonable bail" as the right provided for in this Section.

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.

We suggest that in criminal proceedings the right to an interpreter should involve no cost to the party or witness concerned. We assume that this is the intention of Section 14 (in both criminal and civil proceedings) but we are of the opinion that this Section should be clarified at least in reference to criminal cases.

Section 26

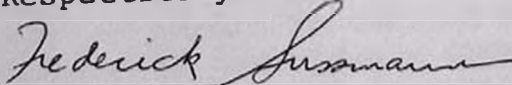
No provision of this Charter, other than Section 13, affects the laws respecting the admissibility of evidence in any proceedings or the authority of Parliament or a legislature to make laws in relation thereto.

This Section does not entrench any specific or general right and should be eliminated.

CONCLUSION

Despite the above suggested amendments, we are of the opinion that the proposed entrenched Charter of Rights and Freedoms will constitute an historic step in strengthening the rule of law in Canada and in the protection of the rights of individual Canadians. If properly amended, it will also bring Canada in line with its obligations under the International Covenant on Civil and Political Rights, 1966.

Respectfully submitted,


Frederick Sussmann,



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January 9, 1981

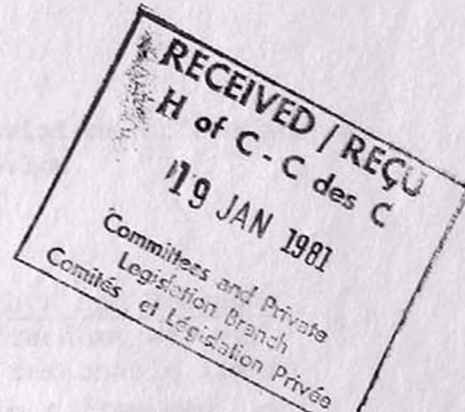
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Mr. Serge Joyal, M.P.,
Co-Chairmen, Special Joint Committee
of the Senate and House of Commons
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Dear Sirs:

The Canadian Association for the Prevention of Crime strongly supports the move to entrench a Canadian Charter of Rights and Freedoms in Canada's Constitution. We believe, however, that amendments to the draft being considered by your Committee are essential if the resulting Charter is to have maximum effect.

A delegation representing our Association met with you on December 11, 1980. The delegation consisted of Dr. Frederick Sussmann, professor, Faculty of Law, University of Ottawa; Dr. Tadeusz Grygier, professor emeritus, Department of Criminology, University of Ottawa; and myself. At that time we presented a written statement of our position. However, a number of points were raised in the discussion that followed our presentation that were not covered in our brief and we undertook to provide you with a revised statement including this additional material. The revised statement is contained in this letter.

Our Association is on record as supporting a series of criminal justice principles we believe should be entrenched. They consist of an edited version of the principles that originally appeared in the Report of the Canadian Committee on Corrections (Ouimet Report). A copy of the principles we support is attached. We think that Principle ii which says that the basic purposes of the criminal law should be carried out with no more interference with the freedom of individuals than is necessary, and Principle vii, which deals with the use of discretion, are particularly pertinent.



The Canadian Association for the Prevention of Crime is a national voluntary body with the twin objectives of reducing the crime problem and promoting good criminal justice services for all Canadians. In our preventive role we are interested in all sections of the proposed Charter that have implications for improving the lot of Canadians who suffer under social handicaps. However, because of time pressures, we are limiting our presentation to your Committee to those sections of the proposed Charter that deal with Legal Rights.

PROPOSED AMENDMENTS TO THE CHARTER

We agree with all provisions of the proposed legal rights with the exceptions set out below.

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 of government.

CAPC recommends deletion of this Section. It places the effectiveness of all Sections that follow in doubt and would make problematic their capacity to nullify conflicting legislation. Deleting this Section would remove any doubts as to the application of the entrenched rights and freedoms to conflicting legislation and to other actions by governments or their agents.

Section 8

Everyone has the right not to be subjected to search or seizure except on grounds, and in accordance with procedures, established by law.

Section 9

Everyone has the right not to be detained or imprisoned except on grounds, and in accordance with procedures, established by law.

Section 11(d)

Anyone charged with an offence has the right....
 (d) not to be denied reasonable bail except
 on grounds, and in accordance with procedures,
 established by law;

We support the intent of these Sections which is to make arbitrary government action inadmissible. However, we are of the opinion that the phrase "except on grounds, and in accordance with procedures, established by law" would make the relevant provisions meaningless. Such exceptions imply that any legislatively authorized grounds or procedures can override the essential provisions of fundamental freedoms which the above Sections are trying to protect.

We suggest the deletion of the above-quoted language from these Sections, and the substitution of language indicating that the action taken should not be arbitrary or unreasonable. Accordingly, the suggested amended forms of Sections 8 and 9 would be as follows:

Section 8

Everyone has the right not to be subjected to arbitrary or unreasonable search or seizure.

Section 9

Everyone has the right not to be arbitrarily or unreasonably detained or imprisoned.

Section 10(b)

Everyone has the right on arrest or
 detention....(b) to retain and instruct
 counsel without delay;

We suggest additionally entrenching the right to free legal aid to be available to the accused with insufficient financial means in criminal proceedings.

Section 11(d)

Anyone charged with an offence has the
 right....(d) not to be denied reasonable
 bail except on grounds, and in accordance
 with procedures, established by law;

We suggest adding "own recognizance" as an alternative to "reasonable bail" as the right provided for in this Section, in addition to the deletion and language modification referred to above. Accordingly, the suggested amended form of Section 11(d) would be as follows:

Section 11(d)

Anyone charged with an offence has the right... (d) not to be arbitrarily or unreasonably denied bail or release on his own recognizance.

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.

We suggest that in criminal proceedings the right to an interpreter should involve no cost to the party or witness concerned. We assume that this is the intention of Section 14 (in both criminal and civil proceedings) but we are of the opinion that this Section should be clarified at least in reference to criminal cases.

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.

We would suggest the discriminations that would be made illegal under this Section be given as examples only rather than as an exclusive list. The implication that other forms of discrimination are legal would then be avoided.

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.

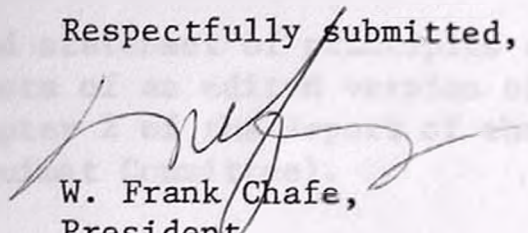
This Section does not entrench any specific or general right and should be eliminated.

Also see Purpose of the Criminal Law

CONCLUSION

Despite the above suggested amendments, we are of the opinion that the proposed entrenched Charter of Rights and Freedoms will constitute an historic step in strengthening the rule of law in Canada and in the protection of the rights of individual Canadians. If properly amended, it will also bring Canada in line with its obligations under the International Covenant on Civil and Political Rights, 1966.

Respectfully submitted,



W. Frank Chafe,
President,
Canadian Association for the
Prevention of Crime.

Committee on Proposals, as edited below, is adopted as the basis for criminal justice in Canada.

- (1) The basic purpose of criminal justice is to protect all members of society from seriously harmful and dangerous conduct.
- (2) The basic purpose of the criminal law should be carried out with no more interference with the freedom of individuals than is necessary.
- (3) Recognition of the rights and dignity of all those involved in the criminal justice process, including witnesses, suspects, accused (innocent or guilty), victims and officials, must be secured by proper protection at all stages of the criminal process.
- (4) No conduct should be defined as criminal unless it represents a serious threat to members of society, and unless the act cannot be dealt with through other social or legal means.
- (5) The criminal justice process should operate to protect crime and protect members of society.
- (6) The criminal justice process should be carried out in a fair and equitable manner.

Aims and Purposes of the Criminal Law

Part of the difficulty in reaching agreement on what changes in the criminal law are indicated is the lack of agreement on what the criminal law is supposed to do. The Canadian Association for the Prevention of Crime believes it is imperative that a comprehensive statement of the principles and purposes that should underlie the criminal law be prepared and actively adopted.

A recommended statement of principles and purposes follows. It consists of an edited version of the eight Principles appearing in Chapter 2 of the Report of the Canadian Committee on Corrections (Ouimet Committee).

RECOMMENDATION 1. It is recommended that the eight Principles set out in the Report of the Canadian Committee on Corrections, as edited below, be adopted as the basis for criminal justice in Canada.

- (i) The basic purpose of criminal justice is to protect all members of society from seriously harmful and dangerous conduct.
- (ii) The basic purposes of the criminal law should be carried out with no more interference with the freedom of individuals than is necessary.
- (iii) Recognition of the rights and dignity of all those involved in the criminal justice process, including witnesses, suspects, accused (innocent or guilty), victims and officials, must be assured by proper protection at all stages of the criminal process.
- (iv) No conduct should be defined as criminal unless it represents a serious threat to members of society, and unless the act cannot be dealt with through other social or legal means.
- (v) The criminal justice process should operate to prevent crime and protect members of society only by way of:
 - (a) the deterrent effect, both general and particular, or criminal prohibitions and sanctions;

- (b) the educative effect through guiding, alerting, and where possible involving members of the public;
 - (c) a recognition that the offender is legally accountable for his crime and that he shares with society and its agencies responsibility for his behaviour and for becoming a law-abiding member of the community;
 - (d) a range of sanctions including prohibitive custodial and corrective measures, aimed at the rehabilitation of the offender where possible, and including control and detention under such conditions and for such periods of time as are deemed appropriate within the law and with special attention to offenders found to constitute a grave threat to the safety and welfare of others;
 - (e) compensation and restitution to victims of crime.
- (vi) The law enforcement, judicial and correctional processes should form an inter-related sequence.
- (vii) Discretion in the application of the criminal law should be allowed at each step in the process: arrest, prosecution, conviction, sentence, corrections and pardon, but such discretion should be controlled within guidelines and applied without unfair discrimination or prejudice; whenever feasible and appropriate, any decision should be preceded by consultation with the offender, especially when it seriously affects his freedom and welfare.
- (viii) The criminal process, including the correctional process, must be such as to command the respect and support of the public according to concepts of fairness and justice; the process should also, as far as possible, be such as to command the respect of the offender.

RECOMMENDATION 2. It is recommended that the above Principles or fundamentals or such of them as are appropriate to this purpose, be entrenched in the law both as guides to interpretation and as principles to which future and amendatory legislation should conform.