

CONFIDENTIAL
August 28, 1980

PROVINCIAL PROPOSAL (IN THE EVENT THAT THERE
IS GOING TO BE ENTRENCHMENT)

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Canadian
Charter of
Rights and
Freedoms

1. The Canadian Charter of Rights and Freedoms
recognizes the following rights and freedoms subject
only to such reasonable limits as are generally
accepted in a free society living under a parliamentary
democracy.

- (a) freedom of religion;
- (b) freedom of thought, belief, opinion,
and expression, including freedom of the
press and other media; and
- (c) freedom of peaceful assembly and of
association.

Democratic Rights

Democratic
rights of
citizens

3. Every citizen of Canada has, without
unreasonable 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.

Duration of
elected
legislative
bodies

4. (1) No House of Commons and no legislative
assembly shall continue for longer than five years
from the date of the return of the writs for the
election of its members.

Continuation
in special
circum-
stances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond the period of five years, if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual
sitting of
legislative
bodies

5. There shall be a sitting of Parliament and of each legislature at least once in every year and not more than twelve months shall intervene between sittings.

Legal Rights

Search and
seizure

6. Everyone has the right to be secure against search and seizure except on grounds provided by law and in accordance with prescribed procedures.

Detention
or
imprisonment

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

Arrest or
detention

8. 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 the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

- Proceedings
against
accused in
criminal and
penal matters

9. 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 pre-trial release except on grounds provided by law and in accordance with prescribed procedures;

(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;

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

Treatment or
punishment

10. Everyone has the right not to be subjected to any cruel and unusual punishment

** Self-
crimination

11. A witness has the right when compelled to testify not to have any evidence so given used against him or her in any subsequent proceedings, except a prosecution for perjury or the giving of contradictory evidence.

* The Provinces (officials) were split 5-5 on the inclusion of this provision - see concordance.

** The Provinces (officials) suggested that consideration of the inclusion of this provision or any other provision dealing with this subject matter be deferred pending the report of the Evidence Task Force.

Interpreter 12. A party or witness has the right to the assistance of an interpreter if that person does not understand or speak the language in which the proceedings are conducted.

Mobility Rights

*** The Provinces (officials) suggest that the whole issue of Mobility Rights, if in the constitution, should be elsewhere than in the Charter of Rights.

Official Language and Language Rights

(Sections 18-24 and 30 and 31 of the Federal August 22, 1980 Draft would be sections 13-21 if included in this document.)

**** Provincial officials have not made any joint proposal with respect to these subject matters prior to further discussion by the Minister of the Federal Draft Proposals.

General

Laws, etc.
not to apply
so as to
abrogate
declared
rights and
freedoms

22. (a) Any law, order, regulation or rule that authorizes, forbids or regulates any activity or conduct in a manner inconsistent with this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

Admissibility
of Evidence

(b) Nothing in this Charter affects the admissibility of evidence or the ability of Parliament or a legislature to legislate thereon.

Application
to territories
and
territorial
institutions

23. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory or the Northwest Territories or to the appropriate legislative authority thereof, as the case may be.

Legislative
authority
not
extended

24. Nothing in this Charter confers any legislative power on any body or authority except as expressly provided by this Charter.

TABULAR COMPARISON OF CHARTER OF RIGHTS DRAFTS

CONFIDENTIAL

SUMMARY OF PROVISIONS - JULY 4, 1980
DRAFT

Section 1 - Title

1. To be entitled "Canadian Charter of Rights and Freedoms".

Section 2 - Fundamental Freedoms

2. (1)(a) Freedom of conscience and religion.
- (b) Freedom of thought, opinion and expression, including freedom to disseminate news, opinion and belief.
- (c) Freedom of peaceful assembly and of association.

Limitation Clause

- (2) Those prescribed by law as are reasonably justifiable in a free and democratic society in interests of
 - national security
 - public safety, order, health or morals
 - rights and freedoms of others.

SUMMARY OF PROVISIONS - AUGUST 22,
1980 DRAFT

Section 1 - Recognized Rights and Limits

1. Rights and freedoms recognized subject only to reasonable limits generally accepted in free and democratic society.

Section 2 - Fundamental Freedoms

2. (1)(a) Freedom of conscience and religion.
- (b) Freedom of thought, belief, opinion and expression, including freedom of press and other media.
- (c) Freedom of peaceful assembly and of association.

Limitation Clause

Deleted

PROVINCIAL PROPOSAL (IN THE EVENT THAT
THERE IS GOING TO BE ENTRENCHMENT) -
AUGUST 28, 1980 DRAFT

Section 1

Rights and freedoms recognized subject only to reasonable limits generally accepted in a free society living under a parliamentary democracy. (unanimous)

Section 2 - Fundamental Freedoms

2. (1)(a) Freedom of religion (unanimous)
- (b) As in August 22 Draft (unanimous)
- (c) As in August 22 Draft (unanimous)

Federal - July 4, 1980

Section 3-5 - Democratic Rights

3. Principles of universal suffrage and free democratic elections affirmed.

Right of citizens to vote and to qualify for election to House of Commons or legislature without unreasonable distinction or limitation.

4. (1) Limits on maximum duration of House of Commons and legislatures (5 years)
(2) except in case of national emergency.
5. Requirement for annual sittings of Parliament and legislatures.

Section 6 - Legal Rights

6. (1) Right to life, liberty and security of person and right not to be deprived thereof except by due process of law which encompasses:
(a) right against unreasonable searches and seizures.

Federal - August 22, 1980

Section 3-5 - Democratic Rights

3. Deleted

Right of citizens to vote and to qualify for election to House of Commons or legislature without unreasonable distinction or limitation.

4. (1) Limits on maximum duration of House of Commons and legislatures (5 years)
(2) except in case of national emergency.
5. Requirement for annual sittings of Parliament and legislatures.

Sections 6-15 - Legal Rights

6. Right to life, liberty and security of person and right not to be deprived thereof except by due process of law.
7. Right against unreasonable search and seizure.

Provincial - August 28, 1980

Section 3-5 Democratic Rights

Agree with August 22 draft

Sections 6-15 Legal Rights

6. Delete (unanimous)
7. Right against search and seizure except on lawful grounds and in accordance with prescribed procedures
(N.B. & Newfoundland dissented and would prefer the federal August 22 draft).

Federal - July 4, 1980

- (b) right against arbitrary or unlawful interference with privacy;
- (c) right against detention or imprisonment except on lawful grounds and prescribed procedures;
- (d) right on arrest or detention
 - (i) to be told promptly of reason;
 - (ii) to be provided with the opportunity to retain and consult counsel promptly; and
 - (iii) to remedy of habeas corpus;
- (e) right when charged with offence
 - (i) to know specific charge,
 - (ii) to be tried within reasonable time,
 - (iii) to presumption of innocence, to a fair and public hearing before impartial tribunal,
 - (iv) not to be denied reasonable bail unfairly,
 - (v) to protection against ex post facto offences and punishment;

Federal - August 22, 1980

- 9. Right against arbitrary invasion of privacy.
- 8. Right against arbitrary detention or imprisonment.
- 10. Right on arrest or detention
 - (a) to be told promptly of reasons therefor;
 - (b) to retain and instruct counsel without delay; and
 - (c) to remedy of habeas corpus.
- 11. Right when charged with offence
 - (a) to be informed promptly of specific charge;
 - (b) to be tried within reasonable time;
 - (c) to presumption of innocence until proven guilty according to law in fair and public hearing before impartial tribunal;
 - (d) not to be denied reasonable bail unfairly;
 - (e) to protection against ex post facto offences and punishment;

Provincial - August 28, 1980 3.

- 9. Delete (N.B. dissenting if Federal August 22 draft applied only to federal legislation)
- 8. Agree with July 4 draft (unanimous)
- 10. Agree with August 22 draft (unanimous)
- 11.
 - (a) Agree with August 22 draft (unanimous)
 - (b) Delete - Man., Alta, P.E.I., Ont., Sask. Agree to August 22 - B.C., N.B., Nfld, Que. N.S.
 - (c) Agree with August 22 draft (unanimous)
 - (d) Right not to be denied pre-trial release except on lawful grounds and in accordance with prescribed procedures (unanimous)
 - (e) Agree with August 22 draft (unanimous)

Federal - July 4, 1980

- (f) protection against double jeopardy;
 - (g) benefit of lesser penalty where law is changed before sentencing;
 - (h) protection against cruel and unusual treatment or punishment;
 - (i) right when compelled to testify to benefit of counsel, to protection against self-incrimination and to other constitutional safeguards;
 - (j) right of party or witness to assistance of interpreter in any proceedings.
- (2) Right to fair hearing when rights or obligations being determined.

Federal - August 22, 1980

- (f) to protection against double jeopardy;
 - (g) to benefit of lesser penalty where law is changed before sentencing.
- 12. Protection against cruel and unusual treatment or punishment.
 - 13. Right of witness compelled to testify not to have evidence used against him in subsequent proceedings, except prosecution for perjury or giving contradictory evidence.
 - 14. Right of witness not to be compelled to testify if denied right to consult counsel.
 - 15. Right of party or witness to assistance of interpreter in any proceedings.

Deleted.

Provincial - August 28, 1980 4.

- (f) Agree with August 22 draft (unanimous)
 - (g) Agree with August 22 draft (unanimous)
- 12. Delete words "treatment or" but otherwise agree with August 22 draft (unanimous)
 - 13. Defer and reword after report from Evidence Task Force (unanimous)
 - 14. Delete (unanimous)
 - 15. Agree with August 22 draft (unanimous)

- (3) In times of serious public emergency threatening life of country limits strictly required by circumstances may be placed on right to liberty and security, right against unreasonable searches and seizures, right against arbitrary interference with privacy, right against unauthorized detention or imprisonment, right to habeas corpus, right to reasonable bail, and right to fair hearing for determination of rights and obligations, but all other rights protected.

- (4) Right to legal proceedings in public may be curtailed in interests of
- national security or public
 - public order or morality
 - protection of individual privacy.

Section 7 - Non-Discrimination Rights

7. (1) Right to equality before the law and equal protection of the law without unreasonable and unfair distinction or restriction.

Limitation Clause

- (2) Those limits provided by fair and reasonable test.

Those programs or activities designed for "affirmative action" on behalf of disadvantaged persons or groups.

Deleted.

Deleted.

Section 17 - Non-Discrimination Rights

17. (1) Right to equality before the law and equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.

Exception

- (2) Those programs or activities designed for "affirmative action" on behalf of disadvantaged persons or groups.

17. Section 17 - Non-Discrimination Rights

Delete (N.B. dissented because it favours the principle but does not support current wording)

Federal - July 4, 1980
Section 8 - Mobility Rights

8. (1) Right of citizen to enter, remain in and leave Canada.
- (2) Right of citizen or permanent resident to
- (a) move to and take up residence
 - (b) acquire and hold property, and
- pursue a livelihood, in any province or territory subject to laws of general application but without discrimination based on place of residence or previous residence.

Limitation Clause

- (3) Those prescribed by law as are reasonably justifiable in a free and democratic society in the interests of
- national security
 - public safety, order, health or morals.

Section 9 - Property Rights

9. (1) Right to use and enjoyment of property, individually or collectively, and right not to be deprived thereof except in accordance with law and for reasonable compensation.

Federal - August 22, 1980
Section 16 - Mobility Rights

16. (1) Right of citizen to enter, remain in and leave Canada.
- (2) Right of citizen or permanent resident to
- (a) move to and take up residence
 - (b) acquire and hold property, and
- pursue a livelihood in any province or territory
- (3) Rights subject to laws or practices of general application but without discrimination based on place of residence or previous residence.

Limitation Clause

Deleted.

Property Rights

Deleted.

Provincial - August 28, 1980
Section 16 - Mobility Rights

6. Whole issue, if in the constitution, should be elsewhere than in Charter of Rights (unanimous)

Federal - July 4, 1980

Federal - August 22, 1980

Provincial - August 28, 1980

7.

Limitation Clause

- (2) Those which control or restrict use of property in public interest or to secure payment of taxes, duties or penalties;
- (3) Those prescribed by law as are reasonably justifiable in a free and democratic society in the interest of
 - national security
 - public safety, order, health or morals.

Section 10 - Official Languages

- 10. (1) English and French official languages of Canada with status and protection specified in Charter.
- (2) Power of Parliament and legislatures to provide more extensive rights for French and English.

Section 11-16 - Language Rights

- 11. (1) Right to use English or French in all debates and proceedings of Parliament.
- (2) Right to use English or French in debates of legislatures of all provinces.

Section 18 - Official Languages

- 18. (1) English and French official languages of Canada with equal status, rights and privileges re use in all federal institutions.
- (2) English and French have status provided in Charter which may be extended by Parliament or legislatures.

Sections 19-24 - Language Rights

- 19. (1) Right to use English or French in all debates and proceedings of Parliament.
- (2) Right to use English or French in debates of legislatures of all provinces.

Federal - July 4, 1980

Federal - August 22, 1980

Provincial - August 28, 1980

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| <p>12. (1) Statutes, records and journals of Parliament to be in English and French.</p> <p>(2) Statutes, records and journals of legislatures of Ontario, Quebec, New Brunswick and Manitoba to be in English and French.</p> <p>(3) For other provinces not referred to in (2) the same requirement to greatest extent practicable as determined by the legislatures.</p> <p>(4) Where the statutes are published as per subsections (1) to (3) both versions of statutes are equally authoritative.</p> <p>13. (1) Right to use English or French in all proceedings of federally constituted courts.</p> <p>(2) Right to use English or French in all proceedings of courts in Ontario, Quebec, New Brunswick and Manitoba.</p> <p>(3) Right to use English or French in courts of other provinces not referred to in (2) to greatest extent practicable as determined by the legislatures.</p> <p>(4) Right of witness to be heard in English or French, through interpreter where necessary, in any court in Canada in any criminal or serious provincial penal proceedings.</p> | <p>20. (1) Statutes, records and journals of Parliament to be in English and French.</p> <p>(2) Statutes, records and journals of legislatures of Ontario, Quebec, New Brunswick and Manitoba to be in English and French.</p> <p>(3) For other provinces not referred to in (2) the same requirement to greatest extent practicable as determined by legislatures.</p> <p>(4) Where statutes are printed and published in both languages, both versions are equally authoritative.</p> <p>21. (1) Right to use English or French in all proceedings of federally constituted courts.</p> <p>(2) Right to use English or French in all proceedings of courts in Ontario, Quebec, New Brunswick and Manitoba.</p> <p>(3) Right to use English or French in courts of other provinces not referred to in (2) to greatest extent practicable as determined by the legislatures.</p> <p>Deleted.</p> |
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Federal - July 4, 1980

- (5) Power to make rules for the orderly implementation and operation of language rights in the courts.

4. (1) Right of public to communicate with and receive services in English or French from head or central office of any federal government institution, and from any other principal office in areas determined by Parliament on basis of minority language numbers.

- (2) Right of public to communicate with and receive services in English or French from any head, central or principal office of a provincial government institution in areas of provinces where legislatures determine practicability and necessity of providing such services.

15. Preservation of legal and customary rights or privileges for use of languages other than French or English.

16. (1) Right of minority language (English or French speaking) parents who are Canadian citizens to choose minority language education for their children in any areas of province where numbers warrant.

- (2) Legislatures may enact rules, consistent with this right, for determining sufficiency of numbers.

Federal - August 22, 1980

- (4) Power to make rules for the orderly implementation and operation of language rights in the courts.

- (1) Right of public to communicate with and receive services in English or French from head or central office of any federal government institution and from any other office in areas determined by Parliament on basis of minority language numbers.

- (2) Right of public to communicate with and receive services in English or French from any head, central or principal office of a provincial government institution to greatest extent practicable as determined by the legislature.

23. Preservation of legal and customary rights or privileges for use of languages other than French or English.

24. (1) Right of minority language (English or French speaking) parents who are Canadian citizens to choose minority language education for their children in any areas of province where numbers warrant

- (2) Legislatures may enact rules, consistent with this right, for determining sufficiency of numbers.

Provincial - August 28, 1980

Federal - July 4, 1980
Section 17 - Undeclared Rights

17. Preservation of any rights not specifically mentioned in Charter including those that may pertain to native peoples.

Sections 18-23 - General

18. Charter rights to render inoperative any law or administrative act which is in conflict with Charter provisions.
19. Where no other effective recourse or remedy exists, courts are empowered to grant such relief or remedy for a violation of Charter rights as may be deemed appropriate and just.
20. Charter provisions made applicable to Territories.
21. Legislative authority is not affected except as expressly provided by the Charter.
22. Preservation of existing constitutional provisions respecting French and English languages until Charter provisions are effective.
23. Power of other provinces to entrench same language rights as Ontario, Quebec, New Brunswick and Manitoba respecting statutes and courts.

Federal - August 22, 1980
Section 25 - Undeclared Rights

25. Preservation of any rights not specifically mentioned in Charter including those that may pertain to native peoples.

Sections 26-31 - General

26. Charter rights to render inoperative any law, order, rule or regulation that authorizes, forbids or regulates activities or conduct in manner inconsistent with Charter.
27. Where no other legal recourse or remedy exists, courts are empowered to grant remedy by way of declaration, injunction, damages or penalty for a violation of Charter rights.
28. Charter provisions made applicable to Territories
29. Legislative authority is not affected except as expressly provided by the Charter.
30. Preservation of existing constitutional provisions respecting French and English languages until Charter provisions are effective.
31. Power of other provinces to entrench same language rights as Ontario, Quebec, New Brunswick and Manitoba respecting statutes and courts.

Provincial - August 28, 1980
Section 25 - Undeclared Rights

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- Delete (unanimous)

Section 26

- (a) Agree with August 22 draft and add
- (b) nothing in this Charter affects the admissibility of evidence or the ability of Parliament or a Legislature to legislate thereon. (unanimous)
27. Delete (unanimous)
28. Agree with August 22 draft (unanimous)
29. Agree with August 22 draft (unanimous)