

MANITOBA

STATEMENT ON FUNDAMENTAL RIGHTS

To The Constitutional Conference

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FUNDAMENTAL RIGHTS

ONE OF THE MORE IMPORTANT RESPONSIBILITIES OF THOSE PARTICIPATING IN THESE CONSTITUTIONAL CONFERENCES IS TO FASHION APPROPRIATE METHODS TO PROTECT THE FUNDAMENTAL HUMAN RIGHTS OF CANADIANS.

BECAUSE "FUNDAMENTAL HUMAN RIGHTS" EMBRACE A VERY BROAD AND DIVERSE RANGE OF RIGHTS - INCLUDING, FOR EXAMPLE, SUCH DISIMILAR MATTERS AS FREEDOM OF SPEECH, THE PRESUMPTION OF INNOCENCE, FREEDOM FROM DISCRIMINATION, AND ENTITLEMENT TO A HUMANE STANDARD OF SOCIAL WELFARE - IT WOULD BE UNREALISTIC TO EXPECT THAT THEY CAN ALL BE ADEQUATELY SHIELDED BY ANY SINGLE METHOD OF PROTECTION. IN SOME AREAS, CONSTITUTIONAL ENTRENCHMENT WILL BE EFFECTIVE, WHILE IN OTHERS DIFFERENT FORMS OF PROTECTION MIGHT BE MORE SUITABLE. BUT NO PARTICULAR METHOD SHOULD BE REGARDED AS A PANACEA - THE TASK OF PROTECTING FUNDAMENTAL RIGHTS SHOULD BE TACKLED ON ALL FRONTS, BY EVERY METHOD THAT APPEARS APPROPRIATE TO THE SPECIFIC RIGHT IN QUESTION.

LEAVING ASIDE LANGUAGE RIGHTS, WHICH WILL BE DEALT WITH IN A SEPARATE STATEMENT, FUNDAMENTAL HUMAN RIGHTS ARE COMMONLY CLASSIFIED INTO FOUR GROUPS:

- (A) POLITICAL RIGHTS,
- (B) LEGAL RIGHTS,
- (C) EGALITARIAN RIGHTS, AND
- (D) SOCIAL AND ECONOMIC RIGHTS.

I WILL DEAL WITH EACH TYPE OF RIGHT SEPARATELY.

POLITICAL RIGHTS

POLITICAL RIGHTS SHOULD BE ENTRENCHED BY A CHARTER OF FUNDAMENTAL HUMAN RIGHTS THAT CAN ONLY BE ALTERED BY CONSTITUTIONAL AMENDMENT.

SOME DEMOCRATIC RIGHTS ARE OF SUCH FUNDAMENTAL IMPORTANCE THAT THEY EVEN REQUIRE PROTECTION FROM THE POSSIBILITY THAT THEY MAY BE DISREGARDED BY A MAJORITY OF ELECTED REPRESENTATIVES IN PARLIAMENT OR THE PROVINCIAL LEGISLATURES. THE BRITISH NORTH AMERICA ACT HAS ALWAYS INCLUDED SOME PROTECTIONS OF THIS KIND. FOR EXAMPLE, THE REQUIREMENT OF A FEDERAL ELECTION AT LEAST EVERY FIVE YEARS, AND THE LANGUAGE RIGHTS SET OUT IN SECTION 133 ARE CONSTITUTIONALLY ENTRENCHED.

THE GOVERNMENT OF MANITOBA BELIEVES THAT THIS GROUP OF CONSTITUTIONALLY GUARANTEED RIGHTS SHOULD BE EXPANDED TO INCLUDE ALL RIGHTS THAT ARE OF FUNDAMENTAL IMPORTANCE TO THE PRESERVATION OF DEMOCRATIC GOVERNMENT. AMONG THESE RIGHTS WOULD CERTAINLY BE THE GUARANTEE OF DEMOCRATIC ELECTIONS, AND THE BASIC "COMMUNICATIVE" FREEDOMS OF SPEECH, PRESS, ASSEMBLY AND RELIGION. CERTAIN OTHER RIGHTS, SUCH AS EQUAL PROTECTION OF THE LAW, HABEAS CORPUS AND FAIR TRIAL, AND REASONABLE SECURITY OF LIFE AND LIBERTY, SHOULD PROBABLY BE INCLUDED ALSO, SINCE WITHOUT THEM IT WOULD BE DIFFICULT TO ENSURE THAT FREE ELECTIONS AND THE COMMUNICATIVE FREEDOMS WERE MORE THAN MERE FORMALITIES.

IT WOULD BE NAIVE TO EXPECT THAT A CHARTER OF FUNDAMENTAL HUMAN RIGHTS COULD BE DRAFTED IN A FORM THAT WOULD BE SATISFACTORY FOR ALL TIME TO COME, SO IT WOULD HAVE TO BE POSSIBLE TO AMEND THE CHARTER. LEGISLATURES COULD NOT BE ALLOWED TO CIRCUMVENT THE CHARTER WHENEVER THEY FOUND ITS PROVISIONS INCONVENIENT, YET THE CHARTER COULD NOT BE ALLOWED TO PREVENT LEGISLATIVE ACTION THAT A MAJORITY OF THE NATION DEEMED, AFTER MATURE CONSIDERATION, TO BE NECESSARY. FURTHER DISCUSSION OF THE GENERAL AMENDMENT FORMULA MAY NOT BE PRODUCTIVE AT THIS STAGE OF THE CONSTITUTIONAL REVIEW, BUT THIS DOES NOT MEAN THAT STUDY OF A CHARTER OF FUNDAMENTAL HUMAN RIGHTS CANNOT CONTINUE.

WE SUGGEST THAT DISCUSSIONS PROCEED ON THE ASSUMPTION THAT RELATIVELY SIMPLE PROCEDURE - SUCH AS CONSENT BY PARLIAMENT AND A MAJORITY OF PROVINCIAL LEGISLATURES - WOULD APPLY TO AMENDMENT OF THE CHARTER OF FUNDAMENTAL HUMAN RIGHTS.

LEGAL RIGHTS

THERE ARE MANY LEGAL SAFEGUARDS TO WHICH MOST WOULD AGREE AN INDIVIDUAL WHO COMES INTO CONFLICT WITH THE AUTHORITY OF THE STATE OUGHT TO BE ENTITLED, BUT WHICH ARE NOT SUITABLE FOR CONSTITUTIONAL ENTRENCHMENT. THESE WOULD INCLUDE, AMONG OTHERS, THE PRESUMPTION OF INNOCENCE, THE RIGHT TO COUNSEL, FREEDOM FROM UNREASONABLE SEARCHES AND SEIZURES, REASONABLE SECURITY OF PROPERTY RIGHTS, AND FREEDOM FROM RETROACTIVE LEGISLATION.

SUCH RIGHTS OUGHT, IN THE OPINION OF THE MANITOBA GOVERNMENT, TO BE PROTECTED AT BOTH THE FEDERAL AND PROVINCIAL LEVELS BY STATUTORY BILLS OF RIGHTS. SUCH BILLS, ALTHOUGH NOT CONSTITUTIONALLY ENTRENCHED, WOULD BE WRITTEN IN SUCH A WAY THAT THEY WOULD APPLY TO ALL LEGISLATION PASSED BEFORE OR AFTER THEIR ADOPTION, UNLESS EXPRESSLY STATED TO BE IMMUNE FROM THEIR PROVISIONS.

THERE HAS BEEN WIDE DISAPPOINTMENT IN RECENT YEARS WITH THE INABILITY OF THE CANADIAN BILL OF RIGHTS, 1960, TO PROVIDE MEANINGFUL PROTECTION FOR CIVIL LIBERTIES. HOWEVER, THE DECISION OF THE SUPREME COURT OF CANADA IN THE DRYBONES CASE A FEW WEEKS AGO HAS GIVEN THE BILL OF RIGHTS A NEW LEASE ON LIFE, AND I SUBMIT THAT, WITH SOME AMENDMENTS, IT IS CAPABLE OF BECOMING AN IMPORTANT BULWARK OF HUMAN RIGHTS.

A FEDERAL STATUTORY BILL OF RIGHTS CANNOT, HOWEVER, PROVIDE PROTECTION IN AREAS WITHIN THE LEGISLATIVE JURISDICTION OF THE PROVINCES. THERE IS, THEREFORE, A CLEAR NEED FOR PARALLEL LEGISLATION AT THE PROVINCIAL LEVEL, AND IT IS THE INTENTION OF THE GOVERNMENT OF MANITOBA TO PLACE BEFORE THE MANITOBA LEGISLATURE SOON A MANITOBA BILL OF RIGHTS.

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EGALITARIAN RIGHTS

BY "EGALITARIAN RIGHTS" I MEAN FREEDOM FROM DISCRIMINATION IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATION AND SERVICES, WHETHER SUCH DISCRIMINATION IS BASED ON RACE, RELIGION, ETHNIC ORIGIN, OR SEX.

ONE OF THE MOST EFFECTIVE METHODS OF COMBATING SUCH DISCRIMINATION IS BY THE CREATION OF HUMAN RIGHTS COMMISSIONS. IT WOULD ADVANCE THE INTERESTS OF HUMAN RIGHTS PROTECTION GREATLY IF HUMAN RIGHTS COMMISSIONS WERE ESTABLISHED IN EACH PROVINCE, AND PERHAPS AT THE FEDERAL LEVEL AS WELL. SEVERAL PROVINCES HAVE ALREADY TAKEN THIS IMPORTANT STEP, AND THE GOVERNMENT OF MANITOBA INTENDS TO PROPOSE SIMILAR LEGISLATION TO THE MANITOBA LEGISLATURE SOON.

ANOTHER FORM PROTECTION OF EGALITARIAN RIGHTS THAT MANITOBA SUPPORTS IS THE INCLUSION OF SUCH RIGHTS IN FEDERAL AND PROVINCIAL STATUTORY BILLS OF RIGHTS.

SOCIAL AND ECONOMIC RIGHTS

THE GOVERNMENT OF MANITOBA BELIEVES THAT THE CONSTITUTION WOULD BE INCOMPLETE IF IT DID NOT RECOGNIZE THE DUTY OF GOVERNMENTS TO ENSURE HUMANE STANDARDS OF SOCIAL WELFARE AND OTHER IMPORTANT SOCIAL AND ECONOMIC BENEFITS FOR ALL CANADIANS. THE NEED FOR SUCH BENEFITS AND THE ABILITY OF GOVERNMENTS TO MEET THEM WILL VARY CONSIDERABLY FROM TIME TO TIME, OF COURSE, BUT THE CONSTITUTION OUGHT, IN ITS PREAMBLE, TO STATE THAT THE FULFILLMENT OF THIS DUTY IS ONE OF THE OBJECTIVES OF CANADIAN FEDERALISM.