

July 5, 1980

BACKGROUND NOTES

CHARTER OF RIGHTS AND FREEDOMS

TABLED BY THE DELEGATION
OF THE GOVERNMENT OF CANADA

Introduction

This paper describes, in summary fashion, each of the rights which have been included in the "discussion draft" of the Charter which the federal delegation tabled at the CCMC meeting today.

Because Canadians are concerned about respect for minority rights, it is important to protect both the language rights of minority groups and fundamental rights, such as freedom of speech. These rights, and others, need to be safeguarded. A Charter of Rights and Freedoms for Canadians should therefore include as wide a range of guarantees as possible.

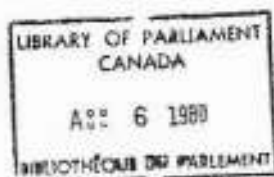
The discussion draft contains certain changes from earlier drafts. Some of these changes came about as the result of advice and suggestions made by the Special Joint Committee of Parliament in 1978 and by provincial delegations during earlier meetings of the CCMC in 1978 and 1979.

Fundamental Freedoms and Democratic Rights
(Sections 2-5 of the Discussion Draft of July 4, 1980)

The first group, Fundamental Freedoms, includes freedom of conscience and religion, freedom in the dissemination of news and freedom of peaceful assembly. In the proposed Charter, the only limitations allowed on the exercise of these freedoms are those prescribed by law which pertain to such matters as public safety or health, national security or the freedoms of others.

Democratic Rights includes the right to vote in an election of members of the House of Commons or of a legislative assembly and the right to stand for office in either of these institutions. This section of the Charter also limits to five years the time any government may remain in power without "going to the people" and requires that Parliament and provincial legislatures meet at least once in every year.

"Entrenchment" in the constitution would ensure that these rights could not be changed by governments or legislatures without going through the constitutional amendment process. At the First Ministers Conference in February 1979, there was almost complete agreement that these rights should be included in the Charter.



Legal Rights
(Section 6 of the Discussion Draft)

Among the many important rights provided for under the draft Charter, each Canadian would be guaranteed the right to life, liberty and security and the right not to be deprived of these "except by due process of law" the major elements of which are listed in the Charter. The proposed Charter enumerates the various considerations which would guide law enforcement agencies and courts when a person is arrested, detained, tried or punished, or otherwise involved in the legal process. Although many of the rights contained in this section are already available to most Canadians, they are not mandatory and could be changed as the result of the decision of Parliament or, in some cases, of a legislature.

The draft Charter places no limitations on these rights other than in time of "serious public emergency threatening the life of the country". Even under those circumstances, the right to life, the right to be provided with opportunity to retain and consult a lawyer, freedom from cruel or unusual treatment or punishment and many other basic legal rights may not be infringed.

Non-Discrimination Rights
(Section 7 of the Discussion Draft)

The federal government is proposing that under the Constitution all Canadians, regardless of race, national or ethnic origin, language, color, religion, age, sex, or any other similar grounds, will have the same rights before the law and enjoy the same protection of the law.

Because it has been very difficult to reach an agreement on a complete enumeration of these grounds, the federal "discussion draft" includes a general clause rather than a list.

Non-discrimination rights need to be assured by a clear declaration in the Constitution. Discrimination on any of these grounds can easily occur. The Government of Canada considers the Charter would be seriously deficient if these rights were not covered.

This section contains a provision permitting the use of "affirmative action" programs that are authorized by law to improve the conditions of disadvantaged people or groups of people.

Mobility Rights
(Section 8 of the Discussion Draft)

The Mobility Rights contained in the discussion draft of the Charter assure citizens of Canada the constitutional right to enter, remain in and leave the country. Moreover, this section gives all Canadian citizens and permanent residents the right to establish

themselves in any province of Canada, and to acquire property and pursue employment in any province of Canada. This section would reduce barriers to mobility of people and their participation in the benefits of Canadian federalism.

What is being proposed in this section is that every Canadian citizen and permanent resident of Canada should enjoy basic rights throughout the country, without discrimination based upon a province of residence or province of birth.

Property Rights

(Section 9 of the Discussion Draft)

Property Rights and Mobility Rights are the only provisions in the Charter which refer explicitly to economic rights. This section also deals with expropriation and control of property. It would ensure that limitations on these rights could only come about in accordance with law. People would have to be fairly compensated whenever it was necessary to expropriate land or other property.

Language Rights

(Sections 10-16 of the Discussion Draft)

Entrenching the language rights of English-speaking and French-speaking Canadians in the Constitution is the best means of

- recognizing the duality of Canadian society,
- being fair and reasonable to all Canadians, wherever they may live,
- ensuring mutual respect for both language groups.

In earlier discussions among governments, it had been generally recognized that it would be desirable to provide language rights. Some governments do, however, have legitimate concerns about their capacity to give full and immediate effect to certain rights. There are also questions about the precise demographic and geographic criteria to apply when determining the circumstances under which certain rights would be practicable. In drafting the language rights provisions of the Charter, the federal government has taken account of these practical concerns.

The federal government and two provinces (Quebec and Manitoba) currently have entrenched provisions on the use of English and French in the debates, statutes, records and journals of their legislatures and in court proceedings. (Section 133 of the BNA Act and Section 23 of the Manitoba Act.) It is proposed that the other two provinces with large linguistic minorities (Ontario and New Brunswick) should have the same status.

There are also provisions regarding service to the public at both levels of government, and on the use of French or English in criminal proceedings in courts across Canada.

Minority official language education rights, which are covered in Section 16 of the discussion draft, are of special importance.

Great progress has occurred in this area in recent years. The provincial Premiers met in Montreal in 1978. They issued a communiqué on February 23 of that year in which they agreed to the following "principles":

- "(i) Each child of the French-speaking or English-speaking minority is entitled to an education in his or her language in the primary or the secondary schools in each province wherever numbers warrant.
- (ii) It is understood, due to exclusive jurisdiction of provincial governments in the field of education, and due also to wide cultural and demographic differences, that the implementation of the foregoing principle would be as defined by each province."

The proposal put forward by the federal government in the discussion draft would enable provincial legislatures to determine the numbers of children in any area that would warrant the provision of the necessary facilities. The action taken by most (if not all) provinces in recent years to provide minority language education has removed a practical obstacle to entrenching this right in the Constitution.

Undeclared Rights
(Section 17 of the Discussion Paper)

This section provides that, if individuals or groups of Canadians have rights which are not mentioned in this Charter, they will not lose them because they are not "declared" in the Charter. They will continue to be able to enjoy them fully. This provision is particularly relevant to the rights of Canada's native peoples.

The Government of Canada has already indicated that it will be prepared to discuss aboriginal rights and treaty rights (among other important subjects) with the leadership of the three national native organizations when discussions begin, probably later this year, on the constitutional item "Canada's Native Peoples and the Constitution". In the meantime, the leadership of the three national organizations (National Indian Brotherhood, Native Council of Canada, Inuit Committee on National Issues) will be given an opportunity later this summer to meet with a sub-committee of the CCMC to present their views on Constitutional matters, including the Charter of Rights and Freedoms.