



DOCUMENT: 800-B/031

INDIVIDUAL RIGHTS

A STATEMENT BY THE HONOURABLE WILLIAM G. DAVIS

PREMIER OF ONTARIO

TO THE

FEDERAL-PROVINCIAL CONFERENCE OF FIRST MINISTERS

ON THE CONSTITUTION

OTTAWA, ONTARIO

MONDAY, OCTOBER 30, 1978

INDIVIDUAL RIGHTS

THE UNIQUE, DISTINGUISHING FEATURE OF A GENUINE DEMOCRACY ARE THE RIGHTS AND FREEDOMS THAT ITS INHABITANTS ENJOY. CANADA SHARES THIS VITAL CHARACTERISTIC WITH OTHER WESTERN DEMOCRACIES. INDIVIDUAL RIGHTS ARE THE CORNERSTONE OF OUR SYSTEM OF GOVERNMENT, AND ADHERENCE TO SUCH RIGHTS IS CRUCIAL TO MAINTAINING A HEALTHY, TOLERANT SOCIETY.

THE ISSUE BEFORE US IS NOT WHETHER WE ARE FOR OR AGAINST INDIVIDUAL RIGHTS. THAT IS NOT IN DISPUTE. RATHER, WHAT WE ARE BEING ASKED TO CONSIDER IS HOW BEST TO PROTECT THESE RIGHTS IN TODAY'S COMPLEX SOCIETY. IN EFFECT, OUR TASK IS TO DECIDE WHAT COMBINATION OF UNWRITTEN COMMON LAW, ORDINARY STATUTES, AND CONSTITUTIONAL PROVISIONS WILL MOST EFFECTIVELY SERVE TO SAFEGUARD THE BASIC RIGHTS OF CANADIANS.

IN ONTARIO, THE COMMON LAW TRADITIONS THAT WE HAVE INHERITED FROM BRITAIN ARE THE SOURCE OF OUR RIGHTS. OVER THE YEARS, HOWEVER, WE HAVE DEFINED AND SUPPLEMENTED THE COMMON LAW WITH STATUTORY PROVISIONS. YOU MAY REMEMBER THAT ONTARIO WAS THE FIRST PROVINCE TO INSTITUTE A HUMAN RIGHTS CODE IN 1962, AND TO CREATE A HUMAN RIGHTS COMMISSION TO ENSURE THAT THE RIGHTS GRANTED BY LAW ARE ENJOYED BY EVERYONE LIVING AND WORKING IN ONTARIO.

OUR HUMAN RIGHTS LEGISLATION THUS MAKES IT CLEAR THAT IN ONTARIO EVERY PERSON IS FREE AND EQUAL IN DIGNITY AND RIGHTS WITHOUT REGARD TO RACE, CREED, COLOUR, NATIONALITY, SEX, MARITAL STATUS, ANCESTRY OR PLACE OR ORIGIN. THROUGH THE COMMISSION, IT PROVIDES A MECHANISM TO ENSURE THAT THESE RIGHTS ARE RESPECTED.

ANOTHER EXAMPLE OF THE STATUTORY PROTECTION OF RIGHTS IS THE CANADIAN BILL OF RIGHTS INTRODUCED BY FORMER PRIME MINISTER JOHN DIEFENBAKER IN 1959. THE PASSAGE OF THIS BILL BY THE CANADIAN PARLIAMENT WAS A SIGNIFICANT STEP IN DECLARING OUR BELIEF AS CANADIANS IN THE EQUALITY AND DIGNITY OF EVERY INDIVIDUAL.

FOR THE PAST TEN YEARS, WE IN CANADA HAVE BEEN DEBATING THE QUESTION OF WHAT PROPERLY BELONGS IN A REVISED CONSTITUTION. AS PART OF THIS DEBATE, WE HAVE BEEN CONSIDERING WHETHER SOME OR ALL OF THE BASIC RIGHTS, NOW PART OF OUR COMMON AND STATUTE LAW, SHOULD BE EXPRESSED IN THE CONSTITUTION.

CLEARLY, TWO SCHOOLS OF THOUGHT HAVE DEVELOPED WITH REGARD TO THIS MATTER. THERE ARE THOSE WHO ARGUE THAT A CONSTITUTIONAL EXPRESSION OF RIGHTS IS NECESSARY TO ENSURE THAT THEY ARE NOT BREACHED BY TEMPORARY MAJORITIES IN PARLIAMENT OR PROVINCIAL LEGISLATURES. THOSE HOLDING THIS POINT OF VIEW WOULD LEAVE IT TO OUR COURTS TO DETERMINE HOW TO APPLY THESE RIGHTS IN PARTICULAR POLITICAL, ECONOMIC AND SOCIAL SITUATIONS.

ON THE OTHER HAND, THERE ARE THOSE WHO ARGUE THAT BY DEFINING INDIVIDUAL RIGHTS IN THE CONSTITUTION, AN UNNECESSARY ELEMENT OF RIGIDITY WILL BE INTRODUCED INTO OUR PUBLIC LIFE. SOCIAL VALUES AND CONDITIONS ARE NOT STATIC, AND MANY OF OUR RIGHTS AND FREEDOMS MUST BE ADJUSTED IN THE LIGHT OF CHANGED AND CHANGING CIRCUMSTANCES.

THIS IS MORE DIFFICULT TO ACHIEVE WHEN RIGHTS ARE ENSHRINED IN THE CONSTITUTION AND ARE SUBJECT TO JUDICIAL INTERPRETATION. THOSE WHO HOLD THIS POINT OF VIEW CLAIM THAT ELECTED REPRESENTATIVES, THROUGH THE LEGISLATIVE PROCESS, ARE BETTER ABLE TO RESPOND TO NEW AND UNFORESEEN CONDITIONS. FOR EXAMPLE, THE PASSAGE OF THE ONTARIO HUMAN RIGHTS CODE IN 1962 AND THE SEVERAL AMENDMENTS TO IT SINCE THEN ARE AN IMPORTANT AND CREATIVE LEGISLATIVE RESPONSE TO THE SOCIAL PROBLEMS GENERATED BY THE CHANGING NATURE OF ONTARIO SOCIETY OVER THE YEARS.

IN CONSIDERING THESE TWO LEGITIMATE POINTS OF VIEW, I HAVE COME TO THE UNQUALIFIED CONCLUSION THAT INDIVIDUAL RIGHTS MUST BE INCLUDED IN THE CONSTITUTION. SUCH RIGHTS SHOULD BE THOSE ABSOLUTELY ESSENTIAL TO THE MAINTENANCE OF OUR PARLIAMENTARY AND DEMOCRATIC SYSTEM OF GOVERNMENT, FOR IT IS ONLY BY MAINTAINING THIS SYSTEM THAT WE CAN CONTINUE TO ENJOY OUR TRADITIONAL RIGHTS AND FREEDOMS. THIS WAS OUR VIEW AT VICTORIA IN 1971. IT REMAINS OUR VIEW TODAY.

IN CLOSING, I WOULD ADD THAT OUR SENSE OF WHAT IS FAIR AND OF WHAT EVERY CITIZEN IS ENTITLED TO EXPECT FROM SOCIETY HAS DETERMINED OUR ACTIONS IN THE FIELD OF HUMAN RIGHTS IN ONTARIO. I AM SURE THAT THE SAME SPIRIT OF JUSTICE PREVAILS THROUGHOUT THE COUNTRY AND ALL CANADIANS ARE COMMITTED TO THE PRESERVATION OF BASIC INDIVIDUAL RIGHTS THAT CANNOT BE DIMINISHED OR TAKEN AWAY. OUR TASK HERE TODAY IS TO DETERMINE HOW WE CAN BEST PROTECT THESE RIGHTS SO THAT THEY MAY BE ENJOYED AND PRESERVED FOR GENERATIONS TO COME.