
Compilation of primary documents to assist
in interpreting the meaning of the term,
“Equality Rights” re: Disability in
Section 15 of the *Constitution Act, 1982*



Table of Contents

Part 1	Previous attempts at “Equality Rights”	2
Part 2	“Equality Rights” clause in successive drafts of Section 15 of the <i>Constitution Act, 1982</i>	4
Part 3	Debates on adding disability to Section 15 in the Canadian Parliament and First Ministers’ Conferences, including proceedings of the Special Joint Committee on the Constitution	8

15. (1) *Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or **mental or physical disability.***

(2) *Section (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

PART 1:

Previous Attempts at an Equality Rights Clause

-----o0o-----

1960: An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms (The Canadian Bill of Rights), ([HERE](#))

1. It is hereby recognized and declared that in Canada **there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex**, the following human rights and fundamental freedoms, namely, [Emphasis is ours]

[...]

-----o0o-----

1971: Victoria Charter, ([HERE](#))

Art. 5. **No citizen shall, by reason of race, ethnic or national origin, colour, religion or sex**, be denied the right to vote in an election of members to the House of Commons or the legislative assembly of a province, or be disqualified from membership therein. [Emphasis is ours]

-----o0o-----

1978: Bill C-60, An Act to amend the Constitution of Canada with respect to matters coming within the legislative authority of the Parliament of Canada, and to approve and authorize the taking of measures necessary for the amendment of the Constitution with respect to certain other matters ([HERE](#))

(d) Non-Discrimination

9. The rights and freedoms declared by sections 6, 7 and 8¹ of this Charter shall be enjoyed without discrimination because of race, national or ethnic origin, language, colour, religion, age, or sex. [Emphasis is ours]

-----o0o-----

10 October, 1978: Report Recommendation on Bill C-60 ([HERE](#))

¹ Section 6 contains political and legal rights. Section 7 contains more legal rights. Section 8 contains mobility rights.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

[Page 11]

Recommendation 4

[...] We are puzzled by the introductory words of clause 7, “In addition to the fundamental rights and freedoms declared by section 6”. In our view the legal protections in clause 7 are specifications of some of those in clause 6 (principally due process of law) rather than additions to them. There is a similar problem with clause 9, which as located is discontinuous with clause 6, whereas it should be linked with the principle of equal protection of the law in that clause

Recommendation 7

[...] Various additions have been proposed to the prohibited grounds of discrimination in clause 9, but with one exception we prefer to remain with the universally accepted grounds of “**race, national or ethnic origin, language, colour, religion, age**

[Page 13]

or sex”, as in clause 9. **Grounds such as physical or other disability or sexual preference might be meaningful in legislation which provides protections with respect to employment, accommodation, and the provision of goods and services, as much human rights legislation does.** But the political and legal rights and freedoms contained in clauses 6 and 7 would not be expanded by the addition of these grounds, since they are already expressly guaranteed by those sections to every person without exception. [Emphasis is ours]

The further ground of marital status has, however, a greater plausibility. It is contained among the prescribed grounds of discrimination in section 3 of the [Canadian Human Rights Act](#)², and is also found in most of the provincial human rights acts. We certainly favor it as a goal. At the same time we are concerned that its inclusion could create possible problems for differential treatment of single and married persons in tax laws or pension legislation or unemployment insurance. We recommend that the ground of marital status be added to the prohibited grounds of discrimination if the Government can resolve this practical problem.

[Page 15]

Recommendation 10

[...] We would also add two additional clauses to the Charter. **First, we believe that special programs on behalf of disadvantaged groups or persons should be protected. Such programs are intended to prevent or reduce disadvantages suffered by groups on the basis of such factors as are specifically authorized by the [Canadian Human Rights Act](#)**³. This protection should perhaps be added to clause 9. [Emphasis is ours]

² This is the up-to-date Human Rights Act, not the original one from 1977.

³ Ibid.

-----o0o-----

PART 2:

“Equality Rights” clause in successive drafts of Section 15 of the *Constitution Act*, 1982

-----o0o-----

4 July, 1980: Rights and Freedoms within the Canadian Federation, Discussion Draft, Tabled at the Meeting of the Continuing Committee of Ministers on the Constitution (8-11 July, 1980)

Non-Discrimination Rights

7. (1) Everyone has the right to equality before the law and to equal protection of the law without distinction or restriction other than any distinction or restriction provided by law that is fair and reasonable having regard to the object of the law.⁴

(2) Nothing in this section precludes any programme or activity authorized by or pursuant to law that has as its object the amelioration of conditions of disadvantaged persons or groups.

(Source: Meeting of the Continuing Committee of Ministers on the Constitution, *Rights and Freedoms within the Canadian Federation, Discussion Draft*. Tabled by the Delegation of the Government of Canada, 4 July 1980, Doc 830-81/027 (Montreal: 8-11 July 1980). Click [HERE](#).)⁵

-----o0o-----

22 August, 1980: “Discussion Draft”⁶

17. (1) Everyone has the right to equality before the law and to equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.⁷

⁴ The first draft doesn’t list the types of discrimination as the later drafts and final version would.

⁵ Original not currently available. Discussion draft found in Anne Bayevsky, *Canada’s Constitution Act 1982 & amendments: a documentary history* (1989).

⁶ Elliot calls this the first version of the Charter.

⁷ The clause lists the types of discrimination for the first time. Disability is not listed.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

(2) This section does not preclude any programme or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

(Source: Robin Elliot, “Interpreting the Charter—Use of the Earlier Versions as an Aid”, *University of British Columbia Law Review* (1982), p. 23. Click [HERE](#).)

-----oOo-----

2, 5, or 6 October, 1980⁸: Draft Tabled in House of Commons and the Senate

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.

(2) This section does not preclude any program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

(Source: Canada, Parliament, “Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada” in *Sessional Papers* (1980). *Sessional Paper* 321-7/20. The text is found on p. 3. Click [HERE](#).)

-----oOo-----

12 January, 1981: Draft Submitted to Special Joint Committee on the Constitution by Jean Chrétien

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex or age.

(2) Subsection (s) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex or age.

(Source: Canada, Parliament, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 36 (12 January 1981). The text is found on p. 11. Click [HERE](#).)

-----oOo-----

13 February, 1981: Draft Tabled in the House of Commons

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination

⁸ Date for this draft is uncertain. Elliot places it as October 5. Parliament was only opened on October 6, 1980 when it was tabled. As for the October 2 date, it refers to “The document entitled ‘Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada’ published by the Government on October 2, 1980” which appears as the title of every issue of the Special Joint Committee on the Constitution.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

based on race, national or ethnic origin, colour, religion, sex, age or **mental or physical disability**⁹.
[Emphasis is ours]

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(Source: Canada, Parliament, *House of Commons Journals*, 32nd Parl, 1st Sess, 1981. The text is found on p. 1249. Click [HERE](#).)

-----o0o-----

23/24 April, 1981: Draft Submitted to Supreme Court for *Constitutional Amendment Reference*

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(Source: Canada, Parliament, *House of Commons Journals*, 32nd Parl, 1st Sess, April 23, 1981. Click [HERE](#) & Canada, Parliament, *Journals of the Senate*, 32nd Parl, 1st Sess, April 24, 1981. Click [HERE](#).)

-----o0o-----

November 18/20, 1981¹⁰: “November Accord Version”¹¹

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(Source: Canada, Parliament, *House of Commons Journals*, 32nd Parl, 1st Sess, 1981. The text is found on p. 4007. Click [HERE](#).)

⁹ This is the first draft where disability is added in Section 15. It is also the final wording and carries over right until its adoption into law.

¹⁰ Elliot has the date as November 18. Source is from November 20.

¹¹ As titled by Robin Elliot, *op cit*.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

-----o0o-----

December 2, 1981: Final Version

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(Source: Canada, Parliament, *House of Commons Journals*, 32nd Parl, 1st Sess, 1981. Click [HERE](#).)

-----o0o-----

PART 3:

Debates on adding disability to Section 15
in the Canadian Parliament and First
Ministers' Conferences, including
proceedings of the Special Joint Committee
on the Constitution

-----oOo-----

October 20, 1980, Peter Lang & Pierre Trudeau, Debate in the House of Commons, p. 3821 (click [HERE](#))

Mr. Peter Lang (Kitchener): Madam Speaker, my question is for the Prime Minister. In view of the fact that many persons with disabilities are presently suffering from discrimination and have voiced their desire to be protected in any new constitution, I would like to ask the Prime Minister if non-discrimination rights for persons with disabilities could be incorporated by amendment into the proposed constitution act of 1980?

An hon. Member: And women?

An hon. Member: And natives?

Right Hon. P. E. Trudeau (Prime Minister): Madam Speaker, I hear, along with this constructive suggestion from the member for Kitchener, members of the official opposition saying we should also include other factors in this bill of rights, and they have suggested women and natives. I am very happy that at last we have the support of the Tory party for our action.

Some hon. Members: Hear, hear!

Mr. Trudeau: I am grateful to the member from Kitchener for having at last brought forth this honest support of our action in protecting the basic rights of Canadians. I am prepared to examine any amendments which can improve the status of the resolution before the House. In some cases I have indicated it would be useful to carry on the discussion so that in the second phase of negotiations, once we have a constitution in Canada, amendable in Canada, we could indeed improve in many ways the bill of rights, including the way suggested by the hon. member from Kitchener.

-----oOo-----

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

October 22, 1980, David Crombie, Debate in the House of Commons, p. 3957 (click [HERE](#))

Mr. Crombie: [...] Mr. Speaker, my time is running out, but before closing I would like to tell members on both sides of the House about a point that I find very important. It concerns section 15 of the proposed resolution, which deals with the right to non-discrimination. That article lists various categories of people who should be protected, but I note that the handicapped had been omitted. I draw that omission to the attention of all hon. members and take this opportunity to ask for their support when the special committee of the House tables its preliminary report, in the very near future. and recommends that the handicapped be included in the bill of rights. I close, Mr. Speaker, saying that I recognize that opinions differ but the objectives of the proposed resolution, those I enumerated at the start, convince me that our efforts will not be fruitless, provided we manage all of us to respect our Canadian tradition and history of justice, loyalty and sharing for the greater good of all Canadians.

-----o0o-----

October 23, 1980, David Smith, Debate in the House of Commons, p. 4003 (click [HERE](#))

Mr. Smith: There is one final point I should like to make, and that is that I for one happen to think it is possible to make some improvements to the charter. I think that is the function of the committee. Some hon. members might be aware of the fact that I am chairman of the committee on the handicapped and disabled. I happen to believe that the charter would be improved if a specific reference to them were included in it. I have spoken on this before and I intend to carry on with this idea and hope to address the committee on that. It would not be a new thing which would open the floodgates to many minority groups because, in fact, a precedent has already been established in the [Human Rights Act](#)¹². The reference in it to the rights of the handicapped and disabled would improve even further what I believe to be a sound and good charter.

After having had the opportunity to travel across the country with the committee and to listen to people speak, I can assure you that Canadians from coast to coast, particularly disabled Canadians, feel very strongly about their rights. They do not really feel certain about them being guaranteed by the various provincial governments of this land. We heard over 600 briefs and many of them spoke to this issue. Without exception they support the concept of a charter enshrining rights. I hope it will ultimately be expanded and made clear that those rights refer specifically to disabled Canadians.

[...]

Stanley Knowles, p. 4005

Mr. Knowles: I was pleased a moment ago to hear the hon. member for Don Valley East (Mr. Smith) raise a point, which was one of the three that I intended to deal with in this portion of my remarks, namely, the rights of the handicapped people of this country. They feel very upset that nothing seems to be done for them in this constitution. Again, I would like to see that done.

¹² See footnote 2.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

-----o0o-----

October 29, 1980, Senator Nurgitz, Debate in the Senate, p. 1032 (click [HERE](#))

An entrenched charter, by its inflexibility, would inhibit the development and acknowledgement of new rights, such as the rights of handicapped people, or rights to privacy, or rights that we are not aware of today that will be important 10, 20 or 30 years hence.

-----o0o-----

October 31, 1980, Senator Doody, Debate in the Senate, p. 1109 (click [HERE](#))

There are many other problems I have with the document before us. The Charter of Rights was mentioned a few minutes ago. I feel that that leaves a lot to be desired. I have received one letter already from a concerned group, and I am sure most other senators have received letters as well. I received a letter from a group of handicapped people who feel that their rights are not protected in the Charter of Rights. They had no worries before that, because they were in the same boat as the rest of us. Now they are suddenly excluded from having any rights, and they are concerned about that.

-----o0o-----

November 3, 1980, Neil Young, Debate in the House of Commons, p. 4343 (click [HERE](#))

CHARTER OF RIGHTS—PROHIBITION OF DISCRIMINATION AGAINST DISABLED AND HANDICAPPED—MOTION UNDER S.O. 43

Mr. Neil Young (Beaches): Madam Speaker, I rise under the provisions of Standing Order 43. Whereas the special committee on the disabled and handicapped has recommended in its [interim report](#) that any charter of rights include provisions to prohibit discrimination against the disabled and the handicapped, I move, seconded by the hon. member for Kamloops-Shuswap (Mr. Riis):

That the Minister of Justice be instructed to bring forward amendments to the proposed charter of rights to include the disabled and to prohibit discrimination against the disabled and the handicapped in all areas, not just in the area of employment.

Madam Speaker: For presentation, this motion requires the unanimous consent of the House. Is there unanimous consent?

Some hon. Members: Agreed.

Some hon. Members: No.

-----o0o-----

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

November 3, 1980, Senator Neiman, Debate in the Senate, p. 1124 (click [HERE](#))

Incidentally, I was delighted to hear Friday morning that the [First Report of the Special Parliamentary Committee on the Handicapped](#) has made a recommendation, among others, that if a Charter of Human Rights and Freedoms is entrenched, it should contain similar protection for the handicapped as we have for other categories in section 15. However, I do have some reservations about the difficulties in defining and delineating the group, so my remarks about the aged apply equally to the handicapped.

-----oOo-----

November 12, 1980: Robert Bockstael & Jean Chrétien, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 3, then scroll to p. 85)

Mr. Bockstael: Mr. Chairman, I have one very short last question dealing with non-discrimination.

As it is stated that “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”, does the minister see any difficulty in adding the handicapped, either physical or mental, to that list?

Mr. Chrétien: There are, of course, some drafting problems which would arise. That is why I stated earlier that the Human Rights Commission will continue to exist as well as the [Human Rights Act](#)¹³. Very often, rights which are being asserted at this time are very difficult to define in legal terms. There are many degrees of disability involved; some are physically handicapped, others are mentally handicapped. Fortunately, society is becoming increasingly more aware of the protection of those rights. However, it is very difficult to draft a precise legal wording which could be easily incorporated into the constitution and into the human rights charter.

We are examining that problem at the moment. It is not for want of sympathy or personal desire that I say that I do not know whether it is possible today. If it is not, the amending formula will allow us, in future, to add to it rights which are not clearly definable today.

-----oOo-----

November 14, 1980, Howard Crosby, Debate in the House of Commons, p. 4693 (click [HERE](#))

Mr. Howard Crosby (Halifax West): Madam Speaker, I rise under the provisions of Standing Order 43 on a matter of urgent and pressing necessity. The handicapped people of Canada have made progress in obtaining provincial legislation recognizing their special needs, but national

¹³ See footnote 2.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

progress will be impossible unless the special rights of the handicapped are recognized in the proposed constitution. I move, seconded by the hon. member for Brandon-Souris (Mr. Dinsdale):

That this House direct the Minister of Justice to consider inclusion in the proposed charter of rights and freedoms a provision recognizing the special rights of handicapped Canadians.

Madam Speaker: For presentation, this motion requires the unanimous consent of the House. Is there unanimous consent?

Some hon. Members: Agreed.

Some hon. Members: No.

-----oOo-----

November 14, 1980: Gordon Fairweather (Chief Commissioner of Canadian Human Rights Commission), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 5, then scroll to p. 8)

Mr. Fairweather: [...] Now, to get specific about Section 15, the non-discrimination rights section and the one that has most implications for us in the work you have given us.

The list of grounds presented in that section is incomplete. In particular, no promise of equality under the law is made to the disabled. We must give this undertaking to the disabled that they are entitled to equal rights, not to do so is to perpetuate stereotypes and attitudes that are more crippling to the disabled than any handicap. Not to do so because of arguments about the financial costs involved in opening up our society to the handicapped would also be wrong.

Costs are not relevant to the guaranteeing of the right to equal protection of the law.

We ask you to change Section 15 of the Charter to a general proscription of discrimination with no grounds listed, as suggested by the Minister of Justice for Canada in his [July document](#), a much better formula for protecting against discrimination than what has come before your Committee in September.

Well, the first part was that was suggested in July, when the Minister of Justice for Canada started his cross country crusade, was a general prohibition against discrimination. We would prefer that to what you have before you now, which is an incomplete list. I suppose you would have the July formulation, if not you have ways of getting it.

We ask you to change Section 15 of the Charter to a general proscription of discrimination with no grounds listed. Failing that, I believe the list should be expanded to include physical and mentally handicapped, marital status, situation de la

[Page 9]

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

famille, sexual orientation and political belief. And may I remind the Committee that this is the non-discrimination section that I am dealing with, that having an inclusive list does not thereby say that the Canadian Human Rights Commission or Parliament is making any statement about sexual preferences or political beliefs, or so on, it is saying that people should not be denied employment opportunities because of these beliefs. Sometimes this is mixed up and I get letters from people saying we are advocating a certain lifestyle or a certain preference. It is not my business to advocate, or my colleagues. You would rightly be outraged if we were in the business of advocating lifestyle.

Sven Robinson & Gordon Fairweather, p. 17

Mr. Robinson: Now, Mr. Fairweather, I would like to turn to some of the proposed additions to the grounds of discrimination which are presently contained in Section 15.

You have proposed that there be an addition of the words “the physically or mentally handicapped”. Certainly, we, on this side, certainly support that addition.

The Minister, in commenting on this proposal, stated—and I believe I am correctly stating what he had said—that while he supported the principle of it, that there were legal difficulties in including such a provision.

I would like to ask you two questions. First of all, what proportion of the complaints to your commission concern the physically or mentally handicapped; and secondly, how would you reply to the suggestion that it is somehow impractical to include that particular ground of distinction in the proposed grounds in Section 15?

Mr. Fairweather: If I may speak to you through the Chair, Senators and Members will remember that part of our Act only applies to physical handicap in employment and not in goods, services and facilities.

Even with that restriction, I note that 21 percent of all complaints have to deal with physical handicap in employment, Mental handicap is not part of our Act now.

Some provincial commissions, to their credit, include mental handicap as part of the physical handicap definition, and it has not yet been challenged; if it came to a court fight I am not sure how successful they would be.

But we believe that, as the 1980s progress, one of the most exciting social phenomena of our times is that the physically handicapped want to be part of Canadian life and so on.

But I must get back to your question, because I seem to be launching off into the deep, but that would not be unfamiliar to anybody here.

The second part of your question had to do with legal definition. We have a definition in our Act which has caused some problems; but we are perfectly happy to leave the matter to the court to define such things. I am never one to be timid about reform; because it is hard to find.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

-----oOo-----

November 20, 1980: David Crombie & Mary Eberts (Legal Counsel, Advisory Council on the Status of Women), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 9, then scroll to p. 146)

Mr. Crombie: It is a welcome change because I think many entrenched rights in the world do not include age for that very reason. However, it is with Section 15(2) that I come to my next question if I could.

While one could understand and indeed applaud excluding age because of its impact on social programs, I also note that you did not include in your list of case by case protective areas, you use sex, race, colour, national or ethnic origin or religion and you did not include either sexual orientation or the handicapped, mental or physical, in your preferred list and I wondered why you did not.

Ms. Eberts: I think that the rationale would be the same as that for age and it has been pointed out by, for example, the [Lamontagne-McGuigan Committee](#) that to include marital status in a list of distinctions that are always regarded as unreasonable would create practical problems with the administration of a number of social programs, for example, and our formulation remains the same: we have two tiers; where the ground is specifically mentioned in Subsection 2 of our proposal we intend that to be a signal to the courts that distinctions based on those grounds are categorically wrong, we should never have them.

Mr. Crombie: Which problems?

Ms. Eberts: Race, sex, colour and so on. Whereas distinctions based on other grounds can be judged by a court to be reasonable in certain circumstances and unreasonable in other circumstances, so that once again, as I mentioned in my initial

[Page 147]

presentation, a statute which denied a driver's licence to someone on the basis of marital status could well be challenged and found to be unreasonable, even though marital status is not explicitly mentioned. So that we hope that our formulation would be flexible enough to cover both sort of hard core types of distinction and also those that required more flexibility. Also, there is nothing in our formulation to prevent either the province or the federal government from passing detailed and articulate legislation to prevent specific kinds of discrimination on the basis of any category.

Mr. Crombie: So it is clear in my own head, Mr. Chairman, you have in your two orders of protected rights, as it were, age, sexual orientation and handicapped, mental and physical, are clearly in the second order which need to be dealt with in a case by case manner as opposed to categorical; is that what you are saying?

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Ms. Eberts: Yes, that is right.

Mr. Crombie: Were you surprised to find yourself in a different category than the Human Rights Commission on the matter?

Ms. Eberts: Well, I think the Human Rights Commissioner, although he proposed first of all the alternative of having no explicit categories and secondly, the alternative of having vast numbers of them, recognized in his written presentation to you that within those numerous, numerous categories that he suggested might be there, there would be the need for different interpretation and he suggested in his written submission that he would say that the courts should be told that race and sex could never be reasonably justifiable and our proposal is in accord with that submission of his but we think that our proposal provides that direction to the courts, that his proposal unfortunately where you have a long list of categories makes it very difficult for the court to extract guidance as to which are to be regarded as the categorical ones and which are to be regarded as the sort of first tier of reasonableness ones, whereas ours makes it fairly clear how the distinction is to be drawn.

Mr. Crombie: I might say, Mr. Chairman, and indeed with kindness, that you may want to familiarize yourself with the brief of the Canadian Association of Mentally Retarded who take a somewhat different view.

-----oOo-----

November 21, 1980: Paul Mercure (President of the Canadian Association for the Mentally Retarded), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 10, then scroll to p. 7)

Mr. Mercure: [...] The Association's main goal is to ensure that the rights of physically and mentally handicapped persons are respected and we have joined forces with other groups representing the handicapped.

Our Association is deeply convinced that all mentally handicapped people should live in society, outside of institutions which tend to alienate them. The integration process has begun throughout Canada and should be pursued on a long-term basis, Because more and more handicapped people are living in society, their rights must be protected.

Thanks to the efforts of our movement, a number of provincial and federal laws have addressed these questions. Our remarks this morning are based on decisions made at our general meeting, held in Toronto last June, and on previous general meetings which took a stand on the rights of the handicapped. At the June meeting, the Association was asked to promote the enshrinement of these rights in the new Canadian constitution.

This resulted in a special brief being presented to the special committee of the House of Commons on the handicapped and the disabled.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

I would like to take this opportunity to say that I am happy with what we were able to accomplish with respect to that committee. Most of what we want to say this morning is contained in the preamble to a [document published in October by the Special Committee on the Handicapped and the Disabled](#).

I would like to quote the third paragraph of the preamble, which reads as follows:

If Parliament decides to enshrine human rights in the patriated constitution, the committee feels that complete and equal protection should be extended to persons suffering from physical and mental handicaps.

We are asking that the rights of handicapped persons be protected in the new constitution.

The Association has not taken up position on how to patriate the constitution. We, of course, have our personal opinions, but we would rather the matter be dealt with by persons more qualified than us.

We want the patriated constitution to deal with the rights of all Canadians and give added protection to handicapped persons. who need it to be able to exercise their rights.

We are not asking for special rights, any more than we are in favour of special or segregated services, which we would like to see replaced. throughout Canada. by integrated services.

[Page 8]

What we are asking for is a place in society and the legal protection that handicapped people need to be able to exercise the same rights as other Canadians.

Mr. David Vickers (Vice-President, Canadian Association for the Mentally Retarded), p. 8

Mr. David Vickers (Vice-President, Canadian Association for the Mentally Retarded): Mr. Chairman and Members of the Committee, we are here this morning to discuss with you a question of values. We are speaking of the value that will be placed upon the lives of our sons and daughters.

We are speaking to you about the value that will be placed upon the lives of thousands of Canadian citizens; these Canadian citizens living with a handicap, whether real or perceived.

Our plea to you is not a plea for special rights. Our plea as advocates of people with a handicap is that they too will be afforded the full opportunity that attaches to their Canadian citizenship: in short, a plea that they will not be forgotten in

[Page 9]

the new Bill of Rights so that they may become, as David has just said, Canadians first and handicapped second.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

We ask you to pause for a moment, if you will, to consider the needs of an average Canadian citizen. Think of your own needs and how they have been met throughout your life. Canadians who are handicapped are no different in that regard than you or I. To achieve the limits of their potential they require, first of all, the ability to live, and in particular adequate health care.

Second, they require an appropriate education in the least restrictive alternative.

Third, they need appropriate vocational training and thereafter appropriate vocational opportunities.

Fourth, they need appropriate residential accommodation, again in the least restrictive alternative.

Fifth, they need appropriate recreational and social opportunities.

Antidiscrimination clauses in charters and human rights codes contains statements of conduct that is prohibitive. In addition to such statements of prohibitive conduct, our association favours a statement of positive rights. We say that those values to which we all subscribe as Canadians can be and ought to be stated as basic conditions of social, economic and cultural rights in Canada.

Unfortunately time has not allowed us to conduct an exhaustive study in that regard. In the preparation of our brief we have strived to return to the basic question, what are those values to which we can subscribe and how can they be entrenched in a charter of rights within the Canadian constitution?

Therefore we had reference to the International Covenants Board on Human Rights. These United Nations Covenants have been subscribed to by Canada and the provinces.

We are told that the ratification of these covenants, the appointment of a Canadian representative to the Human Rights Committee and the subsequent ratification of the optional protocol remain today as a shining example of federal-provincial co-operation.

Therefore, since August 19, 1976 when the document came into effect, we have had a set of international values to which we could refer when considering the very issues which are before us today.

The first of these covenants deals with economic, social and cultural rights. the second with civil and political rights. Our list which was taken from these covenants is found at page 2 of our brief.

From the [second covenant, Article 6](#) and [the first covenant, Article 12](#), we have extracted the right to life and the right to health care. The remainder are all taken from the first covenant and include Article 11, the right to adequate food, clothing and housing; Article 10, the right to protection and assistance of the family; Article 13, the right to an appropriate

[Page 10]

education; Article 7, the right to an opportunity to work, and just and favourable conditions of work; Article 8, the right to participate in trade unions and Article 9, the right to social security.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

It is essential that we take just a moment to say a few words about the right to an appropriate education. Many Canadians who are handicapped are denied this basic right referred to in the International Covenant and subscribed to by Canada and the provinces. It is fundamental to the growth and development of all persons that they receive an appropriate education in the least restrictive environment. It is more than interesting to note that Section 23 of the proposed constitution act 1980 provides and I quote:

the right to have their children receive their primary and secondary school instruction in that minority language if they reside in an area

And so on. Surely, there is a missing link in the logic of this section. There is indeed the need to entrench the right to an appropriate education and thereafter to deal with the equally important question of minority language educational rights. Without the entrenchment of that value, the right to an appropriate education, Canadians who live with a handicap condition are at the outset denied the means of access to many of the benefits of Canadian society.

We recognize that it is an imperfect world. Achieving a consensus on a host of positive rights may be difficult, but nevertheless worthy of the great past which is yours at this moment in our history.

There remains the need for an antidiscrimination clause such as Section 15; however, we wish to convey to your Committee the urgent necessity to add to the specific grounds, and I quote:

"handicapping condition", whether physical or mental

We were so much concerned that our Special Committee produced an [Interim Report](#), I presume you gentlemen have seen that report. One of the statements was to the effect:

The year 1981 will be International Year of the Disabled. It would be an appalling commentary on our Canadian values if we failed to entrench in that year, in our new constitution, protection for all Canadians who live with a handicap whether real or perceived. The usual objection raised to inclusion of handicapped as a prohibited ground of discrimination is that such a measure might obstruct programs designed to remedy the effects of the long history of negative discrimination. We believe that the usual exceptions to affirmative action programs can relieve this concern. And you have dealt with that in the subsection to Section 15.

There is a second objection from those who say that in order to benefit from antidiscrimination clauses a person would first have to identify himself for herself as handicapped. This objection can be overcome if the terminology used is defined broadly, such as we find in a definition of "handicapped person" which can be found in the US. Rehabilitation Act of 1973. There "handicapped person" is defined as any person who has (a) a physical or mental impairment which substantially limits one or more of such person's major life activities; (b) has a record of such impairment, or (c) is regarded as having such an impairment.

[Page 11]

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

It is noteworthy that particularly under subsection (c) of this definition the focus is clearly on the act of discrimination rather than on whether the person discriminated against can be fitted into the protected category. That is the essential purpose of the statutory definition.

In summary, Mr. Chairman and members of the Committee, our Association urges this Committee to consider enlarging the statement of positive rights for all Canadians and to consider in particular those economic, social and cultural rights which today form the foundation of our Canadian society.

Finally, we join with many other Canadian organizations and ask that the words “handicapping condition, whether physical or mental”, be added to the list of prohibited grounds of discrimination found in Section 15. Thank you.

Walter Dinsdale, David Vickers (Vice-President, Canadian Association for the Mentally Retarded), Paul Mercure (President of the Canadian Association for the Mentally Retarded), & Neil Young, p. 11

Mr. Dinsdale: [...] Should it be the will of Parliament to entrench human rights in a patriated constitution, your Committee believes that full and equal protection should be provided for persons with physical or mental handicap.

There has been no protection at all, Mr. Chairman, other than the [United Nations Human Rights Charter](#) to which we have subscribed; but there is no protection in terms of meeting the needs of the mentally handicapped.

Now, having said that. Mr. Chairman, I wonder if we could get down to specifics and ask the people who are representing the mentally retarded this morning, if they feel that Section

[Page 12]

1—and this has become a big issue during the course of the hearings of this Committee—abrogates the rights that are guaranteed in Section 15 of the bill. I presume the witnesses have the resolution before them. I think this is a fundamental point, because it is quite clear today, Mr. Chairman, that there is discrimination against the handicapped, particularly the mentally handicapped.

It is not an accepted body of thought that the mentally retarded, in particular, should have all the rights under a Human Rights Charter. Are the two in conflict?

Mr. Vickers: Mr. Chairman, my own personal view is that it is giving with one hand and taking away with the other. We have not addressed ourselves specifically to that question. feeling it was our mandate to address the issue of entrenching rights for handicapped people.

But, looking at Section 1, and speaking with my legal hat on for one moment, if I may, it appears to me to be giving with one hand and taking away with the other.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Having read, for example, Mr. Fairweather’s comments before the Committee. I am bound to say I subscribe to what he has had to say about appropriate amendments to that section. I feel it does need some work.

Mr. Dinsdale: Mr. Chairman, do I take it that Mr. Vickers is saying that there is a direct contradiction. He has not quite phrased it that way, but the two nullify one another in effect. Is that correct?

Mr. Vickers: Yes, I agree with that. One seems to offset the other.

Mr. Dinsdale: We, in our [Interim Report](#), recommended very strongly that the Charter of Human Rights or the [Human Rights Act](#)¹⁴, in other words, should embrace all the rights that are in the Human Rights Act for the handicapped. Do you think this adequate human rights protection for the people you are representing here this morning? We have a human rights act which was passed in 1977. At that time public opinion was such that the only right that was enshrined in the human rights act—just three years ago, which goes to show how slowly we learn—was the right to employment.

There were numerous arguments put forward at that time to the effect that the human rights act could not go further. We do not propose to outline them here, even though this was the limitation of rights so far as the handicapped was concerned, it did not even embrace the mentally handicapped community, even so far as rights of employment are concerned.

Now, if we were to proceed on the basis of the recommendation of the Special Committee—and it is an action-oriented Committee, I can assure you gentlemen—and have the [Canadian Human Rights Act](#)¹⁵ amended so that the handicapped community were covered completely by that act, would it be sufficient so far as meeting the needs of the people you are representing this morning is concerned?

Mr. Vickers: Again, I come back to the basic value question. I am thinking in terms of vocational and residential opportunities, and in particular, educational opportunities, if

[Page 13]

they are, indeed, basic Canadian values, then I would argue that they ought to be entrenched with the Bill of Rights and not placed simply within the human rights legislation which can be amended by Parliament at Parliament’s will.

So that if you are talking about basic questions of value, speaking as a Canadian and as an advocate for handicapped people, I would argue that those basic values ought to be entrenched within the constitution and not placed necessarily within the Bill of Rights. A Bill of Rights is a second prize. We have never had any prizes for our handicapped friends, and if we are to take anything, obviously we would be prepared to accept amendments to the federal code.

On the other hand, it is still a second prize so far as we are concerned. The people for whom we advocate are now entitled to a few of the first prizes.

¹⁴ See footnote 2.

¹⁵ Ibid.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Mr. Dinsdale: You mentioned in your presentation—a vitally important point—access to education and training. We discovered, as we met with 600 people across Canada, that the area of learning disability is totally limited in its services in Canada, and this affects the area of the mentally retarded, in particular.

And the theme is that this has been a good year in Canada for the disabled. We have had the World Congress in Winnipeg and we are coming into the Year of Disabled 1981, and our report will be tabled to coincide with the Year of the Disabled. A theme of the report will be deinstitutionalization, getting the disabled out of what we call human warehouses where the care is merely custodial and where there is no provision for recreational, educational and transportation and all the other vital services that are needed to meet the needs of the disabled community. All this has to it an economic factor as well. It is tremendously expensive—custodial care without any rehabilitation.

So if Parliament enshrines, as you are recommending, a Charter of Rights for the Disabled in specific terms, and if we got rid of the conflict between Sections 1 and 15, do you think it would be helpful in encouraging this process towards deinstitutionalization?

Mr. Mercure: Yes, we believe that type of protection would help our local association to make sure that the specific rights of individuals are protected. This would help us to create services within the community.

This is the reason why deinstitutionalization takes a very long time to accomplish, because most professionals, even most governments, address themselves to deinstitutionalization, but we cannot accept these people within the community without support services, which, in the long run, could be a lot more effective, and sometimes even less costly to the community as a whole.

More than that, we believe that any segregation for any group increases very rapidly the difference in behaviour and also it is a fundamental question of value in our society to accept the human person as he or she is, not to separate or segregate any group.

[Page 14]

The mental retardation people have not been segregated for a long period of time. It is only in the last 100 years that that problem has arisen from the industrial era. Mentally handicapped people used to live within the community before.

Mr. Young: Thank you very much. I also want to thank you for appearing before the Committee and presenting such an excellent brief. I am also a member of [the Special Committee on the Disabled and the Handicapped](#), and over the summer months, we had over 400 witnesses who made presentations to that Committee and without exception, everyone argued that disability and handicap should be included in any new charter of rights and freedoms.

I want to center on one specific area, immediately, because, to me, it indicates not only society's attitude towards the disabled and the handicapped, but it is certainly a crystal clear example of the court's attitude towards the disabled and the handicapped, and particularly mentally retarded individuals.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

I want to spend a few minutes, if I may, on Section 7 of the proposed charter, legal rights. and to try and tie it into the absence of any provisions for the disabled and the handicapped under Section 15.

Under Section 7 of the proposed charter it is stated:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof

We have, under the Criminal Code, provisions at the present time, to issue a Governor General's Warrant under that particular code, and I am advised as of June 1980 there were 834 individuals who were confined to psychiatric institutions after having been charged with a crime of some sort, and after being assessed by a review board of psychiatrists and lawyers, were declared not to be fit to stand trial.

As I say, there are over 800 Canadians who are confined to institutions who have not been tried, and who, in the case of the mentally retarded individuals, in all probability, will never be fit to stand trial.

There is one case in particular I want to raise with you and that is the one concerning a man by the name of Emerson Bonnar who in 1964 was charged with attempting to steal a woman's handbag.

He has been confined in an institution in New Brunswick— and it is a maximum security institution, as I understand it— since 1964, because the Review Board does not consider him to be fit to stand trial.

In your opinion, in the absence of any specific mention of the disabled and the handicapped under this proposal and the definition under legal rights, would this at this stage help a person like Emerson Bonnar?

Mr. Vickers: I am not sure that would. I am very familiar with the Bonnar case. That case is a classic example of somebody having been labelled early on and having that label

[Page 15]

remain on his back throughout his life. He has been labelled "mentally retarded" and "violent" and all the evidence which existed in 1964 and which exists today is contrary to that.

The evidence is that he is not violent. He is yet to be tried for the act of purse snatching. In my submission—and I have said this elsewhere—it is a classic example of the abuse of the criminal justice system. Whether the members of the community know it or not—and Mr. Dinsdale raise the question of the learning disabled—75 per cent to 80 per cent of the youngsters we have in the juvenile justice system are children with learning disabilities, to come back to the educational point. We know that. The jury have been in on that for ten or 15 years.

If the statistics below the border from the President's Committee on Retardation were to carry through in this country—and I suspect they would—approximately ten per cent or better of the adults in the criminal justice system are mentally retarded people. I think it behooves us to

SECTION 15, "EQUALITY RIGHTS", DISABILITY

recognize these statistics and to deal with the problem as a basic problem in terms of fundamental rights, rather than in terms of the criminal justice system.

Would it not be better, for example, to enshrine the positive rights of education in a bill of rights, and the right to vocational training so that these people can find their appropriate niche in life working in the community as substantial citizens rather than serving out their lives in a maximum security institution for, in the Emerson Bonnar's case, the criminally insane?

There is no doubt that recommendations have been made for the amendment of Section 543 and onwards of the Criminal Code, both by the national Law Reform Commission and our organization made recommendations some six years ago in terms of amendments to that provision, and the fundamental flaw lies in the provisions of the Criminal Code.

I do not deny that appropriate amendments in this bill of rights would be of some assistance. Undoubtedly Emmerson Bonnar has been deprived of his liberty for 14 years according to the principles of Canadian justice and the Canadian Criminal Code. Now, whether they are fundamental justice principles or not is perhaps a rhetorical question when you look at the result.

I would hope that Emmerson Bonnar, and our Association has become an advocate for Emmerson Bonnar and is taking today and continues to take steps to have his status corrected, but any help that we can get, whether that be through amendments to the criminal code or amendments by way of entrenching in a charter of rights would be most helpful.

The Joint Chairman (Senator Hays): Thank you. Mr. Young, your last question.

Mr. Young: Out of those 834 individuals who are confined in those institutions without benefit of trial, have you any knowledge of the numbers of that 834 who are mentally retarded.

Mr. Vickers: No, I cannot speak to those numbers but we are presently doing a survey throughout Canada with the

[Page 16]

co-operation of the provincial authorities to try and determine that. I can tell you of my own experience when I was with government. The number in British Columbia in 1974 was 120 people.

We had at close look at what we thought were people who were inappropriately placed and by simply taking a close look at what we thought were inappropriate placements, within a short period of time we reduced the numbers from 120 down to 80, and that is with a very superficial, cursory look.

Now, I am not sure what the numbers are in British Columbia today, but I know for example there was a case in British Columbia of a young native Indian person who had been incarcerated there for three years without trial and his own only offence was that he had been public nuisance by throwing a brick through a store window. It is those cases of abuse which I think we could surface many hundreds if we were to look case by case at each individual situation across Canada, and it is that type of research we are trying to conduct right now. I suspect that it would be somewhere in the neighbourhood of perhaps 15 to 20 percent.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Paul Mercure (President of the Canadian Association for the Mentally Retarded), David Vickers (Vice-President, Canadian Association for the Mentally Retarded), Senator Lapointe, & James McGrath, p. 16

Mr. Mercure: There are cases—and I will ask Mr. Vickers to provide details—where employers . . . In Quebec, the Bureau for the Handicapped is trying to increase the number of jobs available to the handicapped and the mentally retarded.

There have been several cases involving handicapped persons where an attempt has been made to have jobs considered as being suitable for the handicapped, but union rules, particularly with regards to seniority, have prevented this from being done.

There was, for example, darkroom work for the blind. We wanted photography companies to give blind people priority

[Page 17]

for darkroom work and the request was turned down by the unions. This is the type of thing that is related to the union membership issue.

Maybe Bill could complete my answer.

[Text]

Mr. Vickers: My experience with the trade union movement is no different than my experience with any community organizations, whether they be private or public organizations. It is largely a question of attitude, and given the opportunity and shown that the opportunity exists for handicapped people to work, I have found, certainly with the trade union people that I have spoken to, a willingness to venture into what is a new area.

I have no faults to lay with anyone. It really begins at an early age and that is why appropriate education is so important because if you and I had the opportunity to be educated side by side with a severely, profoundly handicapped person, our attitude today might not be to see that person as a handicap and to feel pity and remorse but to see that person as a whole person, as somebody that can contribute to our Canadian society. My experience with the trade union people, certainly on the west coast, is that when I have raised those kinds of issues they are no different than you and I and they begin to see what they can do.

Now, like employers and like public and private organizations, they are a long way away from actually accommodating the needs of our handicapped friends. That is why to entrench the value is simply to signal, if you will, to the trade union movement that all people, including handicapped people, have that as a basic Canadian right and that is why it is important. It is a beacon, if you will, and it affords our people the opportunity for vocational experiences which they heretofore have not had an opportunity to grasp.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Senator Lapointe: You said that you would like to see the minimum wage mentioned in the charter?

Mr. Vickers: I do not think one would deal with minimum wage per se in the charter. I think what we are talking about in the charter is the opportunity for vocational training and vocational opportunities. David’s point was that there are people making two cents an hour in workshops, and I know of workshop situations on the west coast where people are making a dollar a week or things of that sort.

Now, it is time that those workshop opportunities be seen not as opportunities but as situations which keep handicapped people in a demeaning way of life. What we are talking about is not affording more workshop opportunities; we are talking about affording vocational opportunities where people can earn, not be given but earn a wage, and at the very minimum the minimum wage and we know of situations where those opportunities have occurred and people have gone off, if you will, on welfare and have become citizens supporting themselves and their family and community. So we are not asking for anything special, we are simply asking for the same opportunity as other Canadians, so I think that is the point.

[Page 18]

Senator Lapointe: I see that you say in the province of Quebec they have a clause to protect the handicapped and you seem quite satisfied with this clause. Would you like to add something to it or to have it as it is in the Quebec government’s human rights?

[Translation]

Mr. Mercure: Bill 9, of course, as well as the *L’Office des Handicapés au Québec* have been a major step forward for the protection of the rights of handicapped people in that province. I believe this legislation is considered as a very progressive one and that several other provinces are considering implementing something similar. As far as we are concerned, what we want is a greater protection than just a legal one. In other words, we would like this protection to be enshrined in the Constitution, because, even if Section 1 is modified, it would probably afford greater protection than the one offered through a regular legislation, because the government would not be able to change it very easily. It would have to meet the special requirements established for amending the Constitution. I would like to add that people in Quebec are beginning to live with these new rights and the work of our local associations is specifically to make sure that these rights are actually implemented in the daily life of handicapped people.

[Text]

The Joint Chairman (Senator Hays): The last question, Senator.

Senator Lapointe: Yes. Are you satisfied with the [report of the Committee on the disabled](#) when they say that full and equal protection should be provided for persons with physical or mental handicaps? You are satisfied with the declaration and you think it is encouraging?

[Translation]

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Mr. Mercure: Yes. We mentioned, at the beginning of our testimony, that we were very pleased to have obtained this statement. However, it is still a very general statement and it will have to be specified, later on. The third paragraph of the preamble of the report, which I read a while ago, seems to us to be very satisfactory.

[Text]

The Joint Chairman (Senator Hays): Thank you very much, Senator Lapointe. We have one more speaker, Mr. McGrath.

Mr. McGrath: I can be very brief, Mr. Chairman. I realize we have another witness; is that correct?

The Joint Chairman (Senator Hays): Yes.

Mr. McGrath: I would not want to keep the Manitoba witnesses waiting any longer because they are going to have little enough time as it is so I will get very quickly to my question.

I was struck by the question of my colleague, Mr. Dinsdale, with respect to the deinstitutionalizing of mildly mentally retarded people. I know that this is something that is happening across the country and indeed it is happening in Ontario. I know of course you are familiar with the Welch Green Paper, Community Living for the Mentally Retarded. I know it is happening in my own province, but something else is happen-

[Page 19]

ing with that which disturbs me and I would like to hear how your association feels that this problem can be addressed by specifying handicapped rights within the charter, and that is what seems to be a propensity on the part of municipalities to legislate against group homes, in other words we take the mentally retarded out of the institutions and get away from the Bedlam psychology that still prevails in Canada in terms of our treatment of the mentally retarded, put them in homes so they can lead normal lives and we can treat them as human beings, and we come up against this roadblock of the municipalities trying to protect, I suppose, the best interests of their ratepayers and their neighbourhoods although I can not see how that would be any treat to neighbourhoods or ratepayers, but that is the situation I find developing and it has happened in my own area and I am sure it is happening across the country.

Mr. Vickers: Well, there is not doubt it is happening across the country and there is no doubt it is happening for a number of reasons.

The first reason it is happening, it comes back to the question of attitudes again and where do we begin to change attitudes, and my plea again is that we begin with our youngsters in school accepting the disabilities that our fellow Canadians have.

However, that does not take care of you or I who are aged and do not understand that people with disabilities are the same as us. One of the problems with respect, is the basic funding policies of provincial governments who will fund group homes of eight and ten people, and what we are talking about is a group home, a normal family environment and you know and I know that eight or ten people is hardly a normal family environment so there is a basic funding problem and if we

SECTION 15, "EQUALITY RIGHTS", DISABILITY

could talk about funding homes of four or five or even six people. then our argument that we were in fact living in community as a family would be more viable. So that is the second problem.

The third problem is the problem of attitude and the problem of the inability to understand that these people have the right to live in community and live normal lives. There have been some recent encouraging decisions across Canada to assist us in this problem, the Bell Case in the Supreme Court of Canada, recently watered down slightly by a decision in the Ontario Supreme Court. We have had decisions made in British Columbia that take away the right of spot zoning in local municipalities, and where you deal with it I suppose is a structural question or an administrative question. It seems to me that if we are going to deal with it once and for all we have to come to grips with some more fundamental questions. attitudes, funding policies and things of that sort.

However, there is no doubt at all that what we are talking about as an association is community living for all Canadians. not just the mildly retarded. We are talking about community living for all Canadians.

The bill in British Columbia, for example. to keep somebody in an institution runs at \$100 per day. We are talking about

[Page 20]

\$36,000 per year to keep somebody in an institution without any program and without any opportunity for an adequate social life. We think that those kinds of people can be brought back into the community and be made a part of our community and be given opportunities to thrive within the community for far less money.

Now, there may be transitional funding problems but when the bottom line is looked at, and we look at people. the value question is so important. These are Canadians and surely they have a right to get out of those institutions and live like you and I to the limit of their ability within their community.

Mr. McGrath: But my question was: can we legislate against these kinds of attitudes in an entrenched bill of rights?

[Translation]

Mr. Mercure: The situation varies from one part of Canada to the other.

I would like to point out to the committee that in Quebec, under a provision of Law 9 that was lobbied for by our association, no legal action can be taken under zoning regulations to prevent a group home from opening in a community.

In Quebec, then—and I believe Manitoba has a similar regulation—no one can take legal action to prevent group homes for the handicapped from operating, no matter what the zoning regulations are.

It is a provincial law.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

-----o0o-----

November 24, 1980: Noel Kinsella (Chairman, New Brunswick Human Rights Commission) & Senator Irwin, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 11, then scroll to p. 41)

Mr. Kinsella: Yes. That is the equality before the law point.

The other point we make with regard to Section 15 is that, rather than have the exclusive list of grounds which is presently within the wording of Section 15 of the resolution before you, that you would use terminology like “grounds of discrimination such as” and list whichever ones you wish to list, and try to come close to the list of prescribed grounds of discrimination that you would find in the provincial and federal human rights acts of Canada, because they have already been accepted, and then put at the end “or other status”; and the courts, then, would be focussing very clearly on discrimination, these kinds of things and the so-called *ejusdem generis* principle of statutory interpretation which will be applied.

But I would urge that we really focus on this discrimination because of the colour of one’s skin or sex and these kinds of variables which ought not to determine the quality of citizenship. I think that is so clearly accepted by Canadians anyway that it is important that we capture it.

I do not think it is necessary to have a complete enumeration of everything imaginable. Let us grow with this but let us not frustrate the growth by closing it in. Put “such as” and “of the other status” as your parenthesis.

Senator Irwin: I would like to deal with one particular point. Under the New Brunswick Human Rights Code, you say you include such things as at page 8, physical disability, marital status, ancestry and other grounds not included in Section 15.

Dealing specifically with physical disability, we recently had a task force—and they have come up with their first recommendation on this particular point, and they say, should it be the will of Parliament to entrench human rights in a patriated constitution your Committee believes that full and equal protection should be provided to persons with physical and mental handicaps.

They go on under human rights to say that physical handicap be made a prescribed ground of discrimination for all discriminatory practices in [the Canadian Human Rights Act](#)¹⁶ and not just for discriminatory employment practices.

And further, that the [Canadian Human Rights Act](#)¹⁷ should be further amended so that the tribunal orders could be made with respect to access to goods, services, facilities and accommodation and that it include a qualification that changes ordered by a tribunal should not impose undue hardship on the respondents. I will deal with that specifically, but it goes on with other recommendations.

¹⁶ See footnote 2.

¹⁷ Ibid.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Now, under your own particular code, Mr. Kinsella, and specifically dealing with services and access to goods, would the owner of a restaurant or a landlord have to put in ramps to comply with the New Brunswick code?

Mr. Kinsella: In response to your immediate question, in Article 5(2) of the New Brunswick Human Rights Code, we

[Page 42]

have a provision that allows the Human Rights Commission to determine the existence of a bona fide limitation. In other words, the faculty in our Human Rights Code, which I think is an appropriate one, allows the people to respond to the practical realities of things that are happening in the neighbourhood; for example, you may have architecturally an obstacle in relation to a building and it is physically impossible theoretically to make it accessible.

Senator Irwin: I do not want to cut you off, but my time is limited. So, there is a discretion and you have that flexibility.

Mr. Kinsella: That is correct.

Senator Irwin: Senator Lamontagne has often said we are not looking at two mutually exclusive things, a constitution and a legislature; that they should compliment each other. Would it not be better to go as far as you have indicated to put “discrimination” or “nondiscrimination because of employment practices”, which is clear, in a constitution and put “access to goods, services and facilities and accommodation” in a federal legislative statute or provincial legislative statute, something that is flexible and changes with the times and the circumstances?

Mr. Kinsella: It would be very difficult to do that under the present model, in my opinion. You will have to go back to square one of the drawing board. If you did that it would be excellent if it could be done. You will get into the question of the right to work. How is the question of the right to work protected? You are implying that you want to protect the right to work. But the right to work has yet to be enunciated in the resolution as we have it.

So that, that is what I would like to see—the whole thing redrafted. However, I am comfortable with going forward with the present model with some specific recommendations, and I think the affirmative action faculty, expanding Section I5(2) might reach that issue.

Noel Kinsella (Chairman, New Brunswick Human Rights Commission): Mr. Chairman, if I may go back to the preamble to the question, I think that particular brief and recommendation that you received with reference to physical disability, I think it would be very appropriate for this Committee to look very carefully at including as a prescribed ground physical disability, in addition to the reason that we would be drafting a constitution during the international year of the physically disabled.

It seems to me that we ought to be talking about drafting a constitution in terms of the social values of the closing years of the second millennium and not to go back to 1215 and the Magna Carta principles and philosophy, so there is the type of ground which, to my way of thinking, is an

SECTION 15, "EQUALITY RIGHTS", DISABILITY

obvious thing which you put in. But at the same time if you are going to have grounds, I do not think you can put everything in.

-----o0o-----

November 25, 1980: Ron Kanary (Vice-Chairman, Coalition of Provincial Organizations for the Handicapped), Walter Dinsdale, Jim Derksen (Coalition of Provincial Organizations for the Handicapped), Neil Young, Yvonne Peters (Coalition of Provincial Organizations for the Handicapped), Peter Lang, David Smith, & Senator Hays speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 12, then scroll to p. 26)

Mr. Ron Kanary (Vice-Chairman, Coalition of Provincial Organizations for the Handicapped): Thank you, Mr. Chairman. On behalf of the Coalition of Provincial Organizations of the Handicapped, I would like to express our appreciation for this opportunity to participate in what we believe is one of the most important deliberations in Canadian constitutional history. Our National Council is pleased to be represented here today by this delegation representing all our members and associates across Canada, united in determination to see the rights of disabled Canadians recognized in the constitution.

The Coalition, as some of you may know, is a national alliance of nine independent provincial organizations of variously disabled persons functioning democratically so as to represent their views and concerns. At the local level, these nine provincial organizations encompass about 80 chapters representing some 15,000 to 20,000 disabled Canadians.

We gladly endorse the constitution of Canada and whole-heartedly welcome entrenchment in the constitution of a Canadian Charter of Rights and Freedoms.

However, we believe there are several amendments which should be made to the proposed Charter. Of most importance to disabled people in Canada is that disability or handicap should be included as grounds protected from discrimination under Section 15(1) and we recommend this amendment to you.

We recognize and thank members of Parliament, Peter Lang, Therese Killens, David Smith, Stanley Knowles and Neil Young, who spoke for this amendment during the House of Commons debate prior to the striking of your Committee. The all-party House of Commons Special Committee on the

[Page 27]

Disabled and the Handicapped in its [first report to Parliament](#) in October of this year stated:

Should it be the will of Parliament to entrench Human Rights in a patriated constitution, your Committee believes that full and equal protection should be provided for persons with physical and mental handicaps.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Chief Commissioner Gordon Fairweather, in his presentation on behalf of the Canadian Human Rights Commission to your Committee, said any list of prohibited grounds of discrimination in Section 15(1) is incomplete and does not offer adequate protection if it does not include physical or mental handicap. The presentation of the Canadian Jewish Congress to your Committee last week also called for this amendment. The Royal Canadian Legion and the Canadian Labour Congress, we are pleased to know, also support our position; and most likely, many more who will come before you will.

This level of support for our inclusion in the non-discrimination rights section of the Charter demands that the objections to this amendment cannot be vaguely stated, drafting or definition concerns as at present; surely this level of support demands that objections to the amendment must be clearly demonstrable and justifiably sound ones.

The growing awareness and concern about this in society is based on a true understanding that disabled people are a minority who have suffered discrimination which has limited their participation in society and who therefore, require protection of the law. This social understanding calls on you to include disability or handicap as a prohibited ground of discrimination in Section 15(1) of the proposed Canadian Charter of Rights and Freedoms.

There are three kinds of advantages in amending the Charter to include protection for disabled people.

Firstly, constitutional protection of the rights of disabled people would give high symbolic profile to the social concern to recognize and protect these rights. It would set the tone for an improved future. When we are denied service in a restaurant simply because of our blindness, or employment because of deafness, or housing because of a spastic movement disability, we are often injured twice—once by the act of discrimination itself and again by the shocking realization that the state offers us no protection from such discrimination. This situation still pertains in three provinces of Canada; in the other seven provincial jurisdictions, the provinces have taken, to various degrees, a leadership role in providing human rights protection. It will be a profound joy in such circumstances to substitute, for the helpless feeling of being relegated to the refuse, as if with no value or right to expect better than the prejudice or discrimination offered to us in the past, the reassuring knowledge that we are protected from such prejudice and discrimination by the Canadian constitution.

[Page 28]

The Canadian Charter of Rights and Freedoms will articulate the most basic and cherished values of our society and place them in the basic legislation of the land. This alone will set a new tone which of itself will do much to redress the injuries of exclusion and prejudice that have been our inheritance.

Secondly, the inclusion of disability as a prohibited cause of discrimination, as it applies to the substance of the law, will do much to change existing laws at municipal, provincial and federal levels which do discriminate against disabled people. A good example of such a needed change is the legislation which denies disabled people the protection of minimum wage legislation in various provinces and in the federal labour code.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

No longer will we remain the only category of adult Canadians whose labour and productivity can be bought for twenty-five cents a day and less. Lest this example should be misunderstood, the constitutional change we recommend to you will not mean that all centres offering daytime activity for disabled people will be required to pay minimum wages. but it will mean a distinction will have to be made between daycare, activity centres where people do not work and which are therefore exempt from minimum wage standards, and settings where people work which will be subject to such standard protections from exploitation.

The amendments we are recommending to you would also help preclude any future legislation at municipal, provincial or federal levels which would discriminate against disabled people. Forty years ago Nazi Germany enacted legislation which called for compulsory sterilization of certain disabled people in the name of racial eugenics. Other disabled people were murdered although the word used was euthanasia. Even today in this country, compulsory sterilization is sometimes talked about for certain disabled people and the Ontario Association for the Mentally Retarded is required to have a public policy against any form of passive infant euthanasia.

The Canadian Jewish Congress, in its presentation to you a week ago today, speaking for the inclusion of handicap in Section 15(1) referred to a brief they submitted to the Special Parliamentary Committee on the Disabled and Handicapped wherein they made the same recommendation. They said, in that brief, that the ramifications of our failure to firmly establish equal legal rights for our handicapped and of our near automatic exclusion of them from the mainstream, resulted in events in the not-too-distant past which still cast shadows over us dark enough to send cold shivers running through our souls.

For those of us who still remember, or who have taken the trouble to learn about it, it was in Hitler Germany that the retarded, the gypsies, the physically and emotionally handicapped, so easily became early fodder for the destruction machine.

[Page 29]

It is interesting how little is said about this dimension of the holocaust. This neglect to recall or analyze this particular dimension of the holocaust gives us a frightening insight as to the state of our present moral crisis in respect to what we describe as the disposables of our society.

We value the dignity of the individual and his right to life and security of the person, and have already articulated these values in our draft constitution Section 7. However, in light of history and the ongoing association with disability, of concepts such as racial eugenics and passive euthanasia, disabled Canadians deserve the same reassurance of the amendment we recommend to ensure

the right . . . to the equal protection from the law without discrimination because of . . . disability or handicap,

So that forty years from now such atrocities could not so easily be perpetrated in Canada. Disabled Canadians need to know they are secure from such dangers and that their fellow Canadians hold values which embrace the right to life and security of the person for everyone, including disabled people. The amendment we recommend would articulate and help preserve these most important values which are held by the Canadian people today.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

The third general advantage that the inclusion of disability or handicap as a prohibited ground of discrimination would produce, as applied to the administration of the law, is to reinforce human rights protection as an ordinary legislation level. We have struggled for and achieved this in seven of the ten provinces, and have it at the drafting stage in the remaining three. This ordinary legislation level protection, through setting up Human Rights Commissions as courts of first recourse in matters of discrimination, represents the major means by which non-discrimination rights are implemented for the individual who experiences discrimination.

We agree with Chief Canadian Human Rights Commissioner Gordon Fairweather that the Charter of Rights and Freedoms should apply to both the substance and the administration of the law.

We believe that Section 15(1) of the proposed Charter will then make it possible for the decisions of human rights commissions to be appealed to higher courts on constitutional grounds. This will do much to improve the quality of protection on grounds which are listed in Section 15(1). The listing of disability or handicap in Section 15(1) then will be important to disabled Canadians as it will improve the protection already available at ordinary legislation levels.

The omission of disability as a listed category in Section 15 (1) would probably significantly damage the quality of protection already achieved at the ordinary legislative level for disabled Canadians. It seems obvious to us that once the Charter of Rights and Freedoms is in place, together with Section 15(1), human rights commissions, when allocating their necessarily limited staff and legal resources will give

[Page 30]

higher priority to complaints of discrimination on grounds which are listed in the constitution because of their potential for appeal to higher courts on constitutional grounds.

Hence, if disability is not among the listing in Section 15(1), complaints of discrimination on grounds of disability will be dealt with using whatever resources the commissions have left over after dealing with complaints on grounds which are listed in Section 15(1). Inadvertently, the Canadian Charter of Rights and Freedoms will create a first and second class of rights to protection from discrimination.

We believe we have a compelling case for the inclusion of disability or handicap as a prohibited ground of discrimination in the proposed Canadian Charter of Rights and Freedoms.

Mr. Chrétien indicated in your Committee meeting of Wednesday, November 12, in response to a question from Mr. Bockstael that the difficulty in adding “handicap” to the list of prohibited grounds was one of drafting a precise legal definition for incorporation into the Charter.

In our view, the Charter of Rights and Freedoms is not an appropriate place for definitions. Neither is it necessary to define disability or handicap or degree of these in the proposed Charter. We note that it has not been necessary to define “religion” in the Charter, despite the plain fact that we will continue to discriminate against religions which practice human sacrifice. We have prepared a rather lengthy document refuting this definitional and other objections to the inclusion of disability or handicap in Section 15(1). This is attached as an appendix to this brief and includes eight quite

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

similar definitions presently found in non-discrimination statutes at federal and provincial levels. We have decided to separate this lengthy section from our presentation, but will be happy to answer questions in this area or read our document into the record if desired.

Mr. Chrétien suggested on November 12 to your Committee, as had the Prime Minister earlier in the House of Commons, that the inclusion of disability or handicap in Section 15(1) should wait until it could be done in Canada by amending the patriated constitution. We wish to note that, indeed, the inclusion of the entire Charter could wait until such a time—but in fact as Mr. Chrétien indicated on page 77 of [Proceedings for the Committee meeting of November 13](#), there are some reasons why entrenching a Charter of Rights and Freedoms for all Canadians should be done now. We believe these reasons also apply for the inclusion of handicap in Section 15(1) now, and not after patriation.

Mr. Fairweather and others have spoken to your Committee about the advantages of fitting the Canadian Charter of Rights and Freedoms to the international context including the international covenants Canada is party to.

We call your attention to the fact that Canada was one of fifty co-movers at the United Nations at the Universal Declaration of the Rights of Disabled People in 1976. Canada was also one of two co-movers of the resolution in the United

[Page 31]

Nations which established 1981 as the International Year of Disabled Persons with the themes of full participation and equality. Including handicap in Section 15(1) of the proposed Charter would be a good demonstration that our domestic actions are in line with the policies we are promoting in the world.

As you can see by our delegation, disabled Canadians are also men and women, Mennonite, French, Irish, and so on; indeed disabled Canadians are all colours, races, religions and ethnic origins. For this reason, our concerns about the proposed Charter naturally go far beyond the inclusion of “handicap” in Section 15(1).

We have studied the whole of the Charter and the various recommendations and concerns that have been brought to your Committee. We find the package of recommendations brought to you by the Canadian Human Rights Commission overall of most value, and therefore, generally endorse and comment it to you.

We do this with only one caveat, that we prefer the Commission’s second option for the wording of Section 15, as [found on page 5A:4 of the record of your Committee meeting of November 14, 1980](#) and listed on that page as point 2.4. The relevant parts of this then read:

15.(1) Everyone has the right to equality under the law and to equal protection of the law without discrimination on grounds such as . . . physical . . . handicap . . .

While our concern and recommendation to you can be reduced to the idea that “handicap” be included as a ground protected from discrimination, we also commend generally the Canadian Human Rights recommendations to you because we feel they have much merit overall, and

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

because we feel the time has come to reach for a consensus and wish to contribute to this consensus process.

A constitution is most basic and fundamental legislation. As such it deals with basic and fundamental issues. The issue as to whether Section 15(1) of the charter of rights and freedoms in the constitutional bill should be amended to include “disability” is also a basic and fundamental matter.

Some disabled people in Canada apply the label TAB to Canadians without disabilities. TAB is an acronym for temporarily able-bodied and is used to remind society that disability is a condition which can occur to anyone at any time, at any level of society. Transport Canada’s demographic study indicates that 34 percent of all persons who reach the age of 80 are disabled in relation to mobility. It may be useful to think of the amendment we propose as a kind of insurance or assurance. It is in fact an assurance that the society we live in will continue to progress toward a society which is supportive and open to the continued participation of people who are or become disabled. It is an assurance that in the event of disability, one will not be relegated to inferior education, low income and the poverty of experience and life style symbolized by the institutional residence and attached historically to the condition of disability.

[Page 32]

We who are already disabled know better than to imagine any legislation, even a constitution, is an instant cure-all for our problems. However, we do believe that the basic and fundamental legislation of a constitution must point to a new standard, and in a direction of orderly change toward that standard whereby the whole of society will benefit.

Thank you, Mr. Chairman.

The Joint Chairman (Senator Hays): Thank you very much, Mr. Kanary. I shall ask the Honourable Walter Dinsdale to question the witnesses.

Mr. Dinsdale: Thank you, Mr. Chairman.

I would like to begin by welcoming the COPO delegation here this morning, Ms Peters, Mr. Kanary and Mr. Derksen, who, as we have heard in the brief presented, are providing and have provided very creative leadership in the campaign for a charter of human rights for the disabled.

I have only one comment to make about the brief. I notice in the names that you presented on the first page you excluded any reference to one party in the House of Commons and, Mr. Chairman, I can only say that is because we were working under closure and we were in the speaking line-up to take part in the debate that set up this committee and we did not have an opportunity to make our representations but I would say, Mr. Chairman, that I think it is well known that there has been a campaign going on in the House of Commons for at least a decade to set up a special parliamentary committee, and one of the key areas of concern was human rights for the disabled. I might say, by way of introduction, that since this [special committee](#) was set up just about a year ago now, there has been a marvellous change in the attitude across the country, in Parliament, to the Bill of Rights for the disabled.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

I think you are aware, and this has not been mentioned in the brief, that Canada hosted the Rehabilitation international Congress for the Disabled in Winnipeg last June. That was a congress that was planned over a period of four years by the Canadian Rehabilitation Council for the Disabled and I think everyone will agree that its theme of integration had a profound impact on the media, on the press and on the people of Canada. and I am sure COPO will agree, too, that the theme we are espousing in our special committee on the disabled of de-institutionalization, getting the disabled into the community, integrating the disabled into the community, came to a head at that congress in Winnipeg.

Also, of course, Canada has been sponsoring the International Year for the Disabled. It was just a year ago that I had an opportunity to speak at the United Nations and one of the points that I made there at the time as a response to the IDYP Resolution was that human rights should be at the fore, it always has been at the U.N. since 1975, at the 30th Session of the General Assembly when the human rights code was passed, when the provincial governments responded and we had hoped that the federal government might respond in 1977 when the [Human Rights Act](#)¹⁸ was passed but, as you know. there was a considerable degree of reluctance at that time to embrace the United Nations code that does include most of the recommendations that you have made in your excellent brief here this morning.

[Page 33]

Well now, you have before you, and it has been circulated, the first report of the [Special Committee on the Disabled](#) and we have felt so strongly about the human rights issue that we have made a primary concern the recommendation that the [Human Rights Act](#)¹⁹ be amended as quickly as possible to include human rights for the disabled.

Having said that, Mr. Chairman. I would like to ask the witnesses this morning if they are as concerned as Mr. Fairweather, who is the Commissioner for administration of the [Human Rights Act](#)²⁰, if you are concerned as he was about the conflict as it was outlined in Section 1 of the resolutions that we are considering, which defines the guarantees of rights and freedoms subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government. The point at issue is that it is only recently that there has been wide acceptance that the disabled should be included in a charter of human rights. Do you share the same concern as Mr. Fairweather that you can drive a truck through art article of that kind with respect to human rights?

Mr. Jim Derksen (Coalition of Prineial Organizations for the Handicapped): Well, Mr. Dinsdale. I would like to say first of all that we are certainly aware of our efforts on our behalf over the years and the efforts of many other people from the Conservative Party on the many fronts that are facing disabled people today. We did, however, confine our remarks in our brief to the issue of entrenchment of the Charter of Rights and Freedoms.

Mr. Dinsdale: This is what always happens under closure, Mr. Derksen.

¹⁸ See footnote 2.

¹⁹ Ibid.

²⁰ Ibid.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Mr. Derksen: However, regarding Section 1 and the other recommendations that were made by Chief Commissioner Gordon Fairweather, we did agree that his alternate wording seemed to us, and we are laymen, a better safeguard or a better series of safeguards for the rights of Canadians overall and so we decided to give a general endorsement to his package of recommendations.

Mr. Dinsdale: I take it from that reply. Mr. Chairman, that you are satisfied that your amendment proposed for Section 15(1) would overcome the deficiencies of Section 1, that there would be no loopholes created as it result of the rather vague wording. This is the first section of a most important document, a very profound revision of the constitution of Canada and there are several authorities in the field of human rights that have focussed in on the deficiencies and the loopholes of Section 1.

Mr. Derksen: It did seem to us that the wording of Section 1 was unnecessarily broad and perhaps covered too much of the Charter itself and that non-discrimination rights, as Chief Commissioner Gordon Fairweather recommended, should be exempt from Section 1, but should, rather, have a separate caveat in the form of Section 15(3) as proposed by the Human Rights Commission, which would enable a reasonable application of non-discrimination rights and a narrower interpretation than was made available through Section 1.

[Page 34]

Mr. Dinsdale: I would take it, Mr. Chairman, that Mr. Derksen and the others are in tune with the recommendation of our Special Committee, notwithstanding what might happen to the resolutions before us, that we proceed immediately with amendments to the [Human Rights Act of 1977](#)²¹. They were brought into effect only three years ago, Mr. Chairman, and I do not know whether you were in the House of Commons at that time, but you will remember the strong resistance towards general acceptance of the principle of human rights.

I presume that our witnesses are strongly in favour of the recommendations of our Special Committee which we have given high priority to by the very fact that we have issued an [interim report](#) before coming down with our final report.

Mr. Derksen: We are very pleased by the urgency indicated in the submission of the preliminary report on this matter. This matter of amending the [Canadian Human Rights Act](#)²² is not at issue in this Committee, however, but I should say that having pressed for this ordinary legislation amendment for many years, having received promises of support from both present opposition parties and a commitment in the Throne Speech from this government, we feel that this amendment is far overdue and is not really open to debate any longer. We are really only waiting very anxiously to see it done.

We are now concerned about the constitution and the inclusion of disability in Section 15(1), which we believe is a very important matter before the nation today.

The Joint Chairman (Senator Hays): Thank you very much, Mr. Dinsdale. Mr. Young.

²¹ See footnote 2.

²² Ibid.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Mr. Young: Thank you, Mr. Chairman.

I, too, am a member of the [Special Committee on the Disabled and the Handicapped](#) and as you know we spent most of the summer months going across the country hearing depositions and witnesses, and by the time we were finished going across the country we heard from over 400 depositions, and without exception each one of those witnesses argued very strongly for inclusion of the disabled and handicapped in any human rights legislation. That is not surprising, I think, when you consider there are something in excess of 800,000 Canadians who are disabled or handicapped in one form or another, which totals about 10 per cent of the workforce and is probably in excess of that. At the present time under human rights legislation there is some protection against discrimination in employment and yet the evidence shows that out of that 10 per cent of the population there is still a 70 to 80 per cent unemployment level amongst the disabled and handicapped community.

I remember when we were in the United States we were told by both government officials and people from the disabled community that there was never a real commitment on behalf of government or its agencies or the private sector towards employment programs for the disabled and handicapped until

[Page 35]

amendments were made to their human rights legislation down there. It was only after these amendments were made that any real commitment came forward. Is that what you hope for here if those amendments are made to this legislation, that it normally increases public awareness and it forces government to give leadership to the private sector, in particular to employ disabled and handicapped people?

Mr. Kanary: Well, again, the amendment to the [Canadian Human Rights Act](#)²³, is that what you are referring to?

Mr. Young: Yes.

Mr. Kanary: Again, as Jim mentioned, as far we are concerned it is no longer up for debate, we are just waiting for it to come. However, the experience in the United States has indicated that constitutional protection is most essential to reduce; that 80 per cent unemployment rate to a reasonable figure.

Mr. Derksen: I would just like to add to that by saying that in America of course the Bill of Rights has been around for a long, long time, but it does not specify the number of minorities that have recently become discernible as needing protection. In America, in fact, it was the Rehabilitation Act of 1974, Section 504, which provided for non-discrimination of disabled Americans, and it was a very broadly-worded section, but the regulations that were subsequently written as to the implementation of Section 504 were very stringent and they resulted in dramatic kinds of changes, changes such that if I go camping in America I can count on an accessible washroom in every campground I get to; changes such that if I drive from Winnipeg, which is my home, the 80 miles to the border, I know there is not one deliberately accessible washroom on the way to the border,

²³ See footnote 2.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

neither is there at Canadian customs, but as soon as I cross that invisible line there is a big sign, "Handicapped Parking", and there is a ramp and there is an accessible washroom. I go to a small town of 500 people and I find that the town hall and the State building and what federal buildings exist in that small town are all accessible to me.

It is that kind of change that has occurred over six years that I think we hope for in Canada. This is not to say that it is going to happen immediately, but we hope there will be progress toward that goal and that in Canada the inclusion of disability in the constitution will set the kind of tone that will result in subsequent legislation and regulations which will give us that kind of access to opportunity.

Mr. Young: Well, we are not only talking about access to employment even though in all the preparations for 1981, including the work of this Special Committee, the evidence as I see it has certainly raised public awareness to the point, particularly in this year where there is an increasing number of cases coming before the Canadian Human Rights Commission from the disabled and handicapped community about discriminatory employment practices within government bodies and government agencies. We are also talking about equal access to services that we temporarily able-bodied people take for granted.

I used to think in this country that the rights to education were a principle, and yet we have experienced over the summer months, and in listening to people we have discovered that

[Page 36]

there are thousands of kids across this country who are disabled or handicapped in one form or another who are denied access to education, so we are not only talking about access to education, we are talking about accommodation, transportation and other goods and services that, as I say, we take for granted.

Would you like to comment on education in particular because it seems to me that that is a key area for the disabled and handicapped people. without having equal advantages in the field of education you are denied equal access to employment and a whole host of other services that there are in society.

Ms. Yvonne Peters (Coalition of Provincial Organizations for the Handicapped): I will just comment on that question. I think that what you have said is very true, that disabled people need to have equal access to education. Unfortunately, that is not always the case. There are not only architectural barriers that can get in the way, there are needs for facilities such as sign language interpreters for deaf people and access to Braille material and so on for blind people.

If we go back to the constitution, what we look to from the constitution is a document that will set a tone for disabled persons in this country so that we can build legislation, or at least use it as a foundation to build legislation so that we can start improving things like educational opportunities and we can start providing equal access in necessary facilities and so on.

Mr. Young: The one last area I want to touch on in particular is the whole area of de-institutionalization because I think probably in terms of society's attitudes towards the disabled or

SECTION 15, "EQUALITY RIGHTS", DISABILITY

handicapped people, it is reflected most clearly I think in how society views disabled or handicapped people.

In the past there has been a tendency to view someone who is disabled or handicapped as a sick person, and of course society keeps sick people in institutions, when the facts of life are that because you are disabled or handicapped does not mean you are sick; you are disabled or handicapped. And the thrust of governments has to be in the direction of assisting the disabled community to come out of institutions and to live as normal a life as possible within the community.

The [Special Committee on the Disabled and the Handicapped](#) have certainly developed that as a theme in our discussion.

Do you see that as playing an important role, not only in 1981 but beyond?

Mr. Kanary: Probably one of the basic reasons why young disabled people are institutionalized is that, first of all, are the attitudinal problem which has developed over so many years. Secondly, because of the lack of appropriate housing; that goes back to the accessibility problem.

As Yvonne has mentioned, we look to the constitution for a final recognition that disabled Canadians are in fact Canadians as well and that the constitution, hopefully, will set a mood so that we can become included in the planning and decision making process over the coming years; so that we could allow

[Page 37]

for adequate housing, and support services for individuals who require such services, and the many other services, accommodations and facilities which we are presently being denied.

We are looking for the constitution to set a tone so that changes may come about, not overnight but over a period of years, that we can become fully integrated and active and contributing as a force of people in society.

The Joint Chairman (Senator Hays): Thank you, Mr. Young.

Mr. Derksen, did you want to say something?

Mr. Derksen: I want to follow that up by saying that presently disabled people and their problems are often viewed through a very biased cloud of emotional responses. This has resulted in a situation which has become clear to the Special Committee on the Handicapped and Disabled wherein the people are institutionalized at 20, 30 or 40,000 dollars a year, where they could be integrated in the community if they had, say, five thousand dollars worth of support services.

Now, it is economically sound to de-institutionalize most disabled people who are presently in institutions.

There has also been a kind of emotional reaction to our call for human rights based upon fear that human rights for disabled Canadians will somehow have a disruptive effect on our society.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

We have shown in the appendix to our brief that that fear is really not based upon any sound reasoning, and that it is an unnecessary fear generated out of the kind of bias and emotion that people feel within themselves when confronted by disabled people.

What we need is a clear-minded, objective approach to our problems; and that approach, I would suggest, starts with an articulation that disabled people are Canadians and should have the right to protection from discrimination as a matter of Canadian heritage or, if you like, of constitutional right.

The Joint Chairman (Senator Hays): Dr. Peter Lang.

Mr. Lang: Concerning the list of those protected from discrimination under Section 15(1), this Committee has had the importance of this issue stressed by Mr. Gordon Fairweather, the Chief Commissioner of the Canadian Human Rights Commission.

The first specific issue that Mr. Fairweather deals with concerning human rights if the disabled. I quote from you minutes of November 14. Mr. Fairweather states:

Now to get specific about Section 15, the non-discrimination rights section and the one that has most implications for us in the work you have given us, the list of grounds presented in that section is incomplete, in particular no promise of equality under the law is made to the disabled.

Mr. Fairweather goes on to state:

Costs are not relevant to the guaranteeing of the right to equal protection of the law.

[Page 38]

Mr. Chairman, all parties have supported in principle the inclusion of the disabled for protection in the constitution. In its first report to Parliament, the Special Committee on the Disabled and the Handicapped stated—and I would like to pass [this report](#) out so that you could follow it on page 1, paragraph 3:

Should it be the will of Parliament to entrench Human Rights in a patriated Constitution, your Committee believes that full and equal protection should be provided for persons with physical or mental handicaps.

There is public support, shown by Mr. Fairweather in his report of a survey of 2,000 Canadians as presented to the Special Committee on the Disabled and the Handicapped and found in their minutes at page 205, which minutes I would like to table later on.

Mr. Chairman, we know that discrimination against the disabled exists. The disabled have told us across the country. The Chief Commissioner of the Canadian Human Rights Commission has told us: the media tells us: Canada has already officially acknowledged discrimination against the disabled and signed at the United Nations on December 9th, 1979²⁴, the [Declaration of the Rights of Disabled Persons](#).

²⁴ This seems to refer to the UN Declaration of December 9, 1975.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

The disabled constitute approximately 10 percent of the population. It is in the Canadian spirit to have a constitution that clearly covers 100 percent of the population.

Mr. Chairman, I would like to direct my first question to Mr. Derksen.

The argument of cost has been used against the inclusion of the disabled in Section 15(1). Mr. Derksen, I wonder if you any comments on this?

Mr Derksen: This seems to be based on the idea that simply to place disability or handicap in Section 15(1) without any limiting clauses might result in the courts imposing disruptive change on our society: for example, that all buildings without elevators be equipped with elevators.

Now, we see that religion, sex and age are also included in that section without any limiting clauses. We see that Section 1 or Section 15(3) as proposed by the Human Rights Commission, would allow the courts to interpret the reasonableness or the justifiable necessity of limiting that protection from discrimination for age, sex and religion.

Sections 1 and 15(3) would make possible an interpretation, in regard to protection from discrimination on the basis of age, by the courts that would uphold 18 as the minimum age for, say, the purchase of liquor, firearms. voting in federal elections. There seems to be a misunderstanding that there is no comparable limiting clauses in existing statutes, and no comparable precedents in existing case law to limit reasonably, where justifiably necessary, that right to protection from discrimination.

In our appendix, we point out the fact that seven provincial human rights commissions and the Acts that they administer

[Page 39]

include limiting kinds of clauses which take into account undue hardship for the vendor of a service; which take into account the need for the employer to require bona fide occupational requirements; which take into account and allow a mechanism whereby the commission or tribunal can determine reasonable qualification to the right.

Now, all of these things are in place. The courts will not have to. We will not desire that in a vacuum in interpreting the constitutional protection for disabled people from discrimination.

We believe that those mediating mechanisms which are already in place will enable an orderly process of change to a point where disabled people would not be discriminated against in the provision of goods, services and in their endeavour to achieve employment and so on.

We believe, in fact, and this has been shown by the strong economies of Northern Europe, that enabling disabled people to participate in society would be an extremely cost effective course of action for this country to take.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

We know that in Sweden technical aids are made available to disabled people who require them for employment and for independent living within the community. The same is true in West Germany.

We believe the cost argument which underlies much of the resistance or objections to the inclusion of disability in the constitution is not a real one.

in our brief we call on those who object to the inclusion of handicapped in the constitution to come up with demonstrably clear and justifiable sound objections, not merely the kind of vague implications or references to drafting and definitional problems. The definitions exist; they are very similar from one jurisdiction to another, which tells us that they have been tested and that they work.

We believe that Chief Commissioner, Gordon Fairweather, has a good deal of experience in administering protection from discrimination for disabled people. We think that his opinion should carry a lot of weight here.

Thank you.

Mr. Lang: Mr. Chairman, my second question is also for Mr. Derksen.

Are there any other governments which have provided protection from discrimination for the disabled, and as a second caveat to that. can you give us any information on the economic factors involved with these governments, and in particular whether they have presented any impediment?

Mr. Derksen: Well, I can say that Nova Scotia, New Brunswick, Prince Edward Island, Quebec, Manitoba, Saskatchewan and Alberta, all give comprehensive protection from discrimination to the disabled through the ordinary legislation of human rights acts. Some of these have been in place since 1974; others are more recent.

There is no indication that these provinces are at the brink of bankruptcy because of that protection.

[Page 40]

Ms. Peters: I wonder if I can add to that. I am from Saskatchewan where we have had comprehensive protection in our Human Rights Code for disabled people for the past year.

As well as being a member of COPE, I am also an employee of the Human Rights Commission and I get to see different perspectives, I suppose.

In Saskatchewan for the past year we have had approximately 40 complaints based upon discrimination because of disability, 20 of which have been in relation to accommodation complaints. I might add that we have in our code a clause which exempts people or businesses or employers if making their place accessible would cause undue hardship and inconvenience.

I might say that, out of all those 20 complaints, we have not activated that mechanism, because once people have been informed that they are violating the law and how they can correct it, they are usually quite willing to do so.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

If I may, I would like to refer to an example which occurred in Saskatchewan. We had five complaints laid against the University of Saskatchewan which contained a number of old buildings that disabled students were not able to have access to.

Technically, in the code, I suppose we could have—well, they were violating the code, and they could have been forced to make the building accessible immediately. This might have caused an economic hardship.

However, the agreement that was agreed upon and settled on between both the respondent and the complainant, established a timeframe in which over the next couple of years allotments from the various budgets would be ascribed to making the building accessible.

What I am trying to illustrate here is that disabled people are willing to be reasonable and that there are methods of overcoming access problems, and certainly Saskatchewan has not been brought to its knees with bankruptcy or anything like that.

We have to realize that this has to be done reasonably and with commonsense.

The Joint Chairman (Senator Hays): Thank you very much. Ms. Peters. Dr. Lang, thank you.

There are two people here who would like to be heard. I wonder if we could confine it to a short question? We have Mr. Halliday and Mr. Smith.

Mr. Smith: Thank you, Mr. Chairman,

I would like, first of all, to congratulate the committee on being here and presenting us with this brief. As a member of the [Special Committee on the disabled and the Handicapped](#). I am aware of the real concerns that our witnesses have today in regard to discrimination.

I think I would be very remiss, as a member of the Official Opposition, if I did not support the comments which came from my colleague, the Honourable Walter Dinsdale, when he brought to the attention of people the serious omission

[Page 41]

certainly of his name from the list of those who have been prominent in putting forward the needs of the handicapped over the years. Indeed, the formation of the antecedent of this committee a year ago was due entirely to the efforts of Mr. Dinsdale, his approach to the United Nations on behalf of Canada has obviously been ignored, and I am surprised that our witnesses forgot that closure did prevent many members from the House of Commons from all parties, indeed, from being involved in this very debate which you have some concern about. To me, that is a form of discrimination, and I am surprised that it is coming before this committee from our witnesses today.

I think, Mr. Chairman, all Canadians are concerned about the problems of discrimination and how we should deal with it. We want to ensure that Canadians, indeed, the handicapped, will not be discriminated against.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

The difficulty, however, is to know whether that can best be achieved by entrenchment or otherwise.

So I would like to ask the committee whether in their study of this whole subject they have given consideration to the possibility of amending the [Canadian Bill of Rights](#), and giving it primacy, as one alternative and have they given consideration to the fact that some countries, such as the United States of America and Russia, do have entrenched Bills of Rights: Canada does not. What are the benefits, vis-a-vis the two which are obvious to us all?

Thirdly, they have raised the matter of minimum wages on page 3 of their report. Have they studied the recently released document by the Economic Council of Canada which throws a lot of question and doubt as to the effectiveness, indeed, of whether or not minimum wages do what they are supposed to do?

Finally, have they given consideration to the difficulties which we have seen both in Canada and more particularly in the United States where they have an entrenched bill of rights, to the difficulty that some judges may be at the extreme end of the spectrum one way or the other and cause great difficulty in the interpretation of what people really want?

Mr. Derksen: I would like to start by saying that having worked very closely with the [Special Committee on the Handicapped and the Disabled](#), and having known Mr. Dinsdale for many years and his efforts on behalf of our constituency, we wholeheartedly are aware of the Conservative Party's efforts on our behalf, and Mr. Dinsdale's in particular.

it was a listing of those members who had spoken specifically for the constitutional amendment that is the substance of our brief today that was given. That was the only the reason why there was no mention of members from the Conservative Party.

In fact, I would like to point out that Mr. Dinsdale last week on Standing Order 43 called for the long-awaited amendment to the [Canadian Human Rights Act](#)²⁵ and we are aware of that intervention and appreciative of it.

We are aware that there are many constitutions in the world today which are not honoured. We are also aware that there

[Page 42]

are constitutions which do find a good deal of honour in the courts of the countries where they are in place.

We have surveyed just this past week, our National Council which is representative of each of nine provinces and we find that our organizations are in favour of an entrenched Charter of Rights and Freedoms, and that we do want inclusion in it. We can only hope, together with all around this table. that if and when this Charter is entrenched, it will be honoured by the courts. Some of us as individuals, although we have not discussed it as the larger organization that we are, are concerned about extreme judgments made by individual judges. Again, it is our hope that the judges will

²⁵ See footnote 2.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

receive and accept clear direction from Parliament in the form of this constitution and the Charter that is intended to be entrenched in it, so that they will give good and reasonable consideration to the interpretation of the Charter.

We are not familiar with the minimum wage document which you referred to. However, I think it is safe to say that in the area of minimum wage, as long as there is minimum wage legislation in Canada designed to protect Canadian workers from lower exploitation of wages, disabled Canadians should be protected by that legislation. At such a time that it may be the wisdom of our country to eliminate minimum wages, then we can reconsider the entire matter and perhaps need not be included at that point.

The Joint Chairman (Senator Hays): Thank you Mr. Derksen.

Mr. Smith?

Mr. Smith: Mr. Chairman, I appreciate the pressures of time and I think I will forego questions, but there are a couple of brief comments that I would like to make.

The members of the Committee will be aware that I am the Chairman of the [Special Committee for the Disabled and the Handicapped](#); and one point I would like to make is that we have had an opportunity of hearing over 600 witnesses right across Canada in 18 different cities and it is quite clear to us that COPO which is represented here today by four very articulate people, is in fact the voice of disabled people in this country. They are very legitimate spokespersons for the disabled community and their headquarters is in Winnipeg. They are well organized and have been most helpful to the work of the Committee.

I thought it might be useful to give just a brief background as to the position of the Committee on the constitution. The first report was really primarily released prior to our final report which will be coming out at the end of the year in order to make our position known on it. This is found in the third paragraph of the first page. It is one sentence, and there was considerable discussion about it, but that presents the unanimous position of the all-party committee. I believe it has already been read by Dr. Lang but it is only one sentence;

Should it be the will of Parliament to entrench human rights in a patriated constitution, your Committee believes that full and equal protection should be provided for persons with physical or mental handicaps.

[Page 43]

I think it is important to point out that it would be unreasonable to conclude that if specific reference is not included that somehow the constitution will not cover disabled Canadians.

It is quite clear to me that it will cover everyone, but I think that our Committee was of the viewpoint that we wanted the clearest possible indication that disabled Canadians are in fact covered and all their rights are protected.

Now, I appreciate that there is some concern over the question of definition and what is reasonable. There has of course been legislative precedent in Canada in the Human Rights Act I am not aware

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

of any difficulties that have been encountered in the interpretation the courts have given to the reference in the Human Rights Act concerning disabled Canadians.

I know that there is also the concern about, well, once specific reference is given to one minority group. does this open the Floodgates to all minority groups? I think it could be argued that the rationale that prompted the reference to disabled Canadians in the Human Rights Act would also exist in the case of the constitution.

Those are really the points that I wish to make, Mr. Chairman. I appreciate your definition problems but this is the position of the Committee and I wanted to reinforce the conclusions of the Committee.

The Joint Chairman (Senator Hays): Thank you very much Mr. Smith. And as Chairman of the Committee you might go back and tell your members that we will include the first report in the Proceedings.

-----o0o-----

December 4, 1980: Nicole Dumouchel (Board Member, Canadian Council on Social Development), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 19, then scroll to p. 30)

Miss Nicole Dumouchel (Board Member, Canadian Council on Social Development): [...] As the Committee has been told, neither physically nor mentally handicapped persons would be protected by this section. We would also point out that discrimination on the basis of sexual orientation, marital or family status, political belief or socio-economic status would not be provided by Section 15 as drafted. Clearly, a statement which will guide through judicial decisions for decades should be both flexible and inclusive in order to accommodate changing social conditions, as well as to safeguard the rights of the present populace.

We believe handicapping conditions, sexual orientation and socio-economic status, marital situation and political belief should be added to the list and that the clause should be rendered more flexible by adding “such as” preceding any description of status. This section should include as well prohibition of discrimination in both the substance and application of the law.

-----o0o-----

December 5, 1980: Les Benjamin & Ken Norman (Chief Commissioner, Saskatchewan Human Rights Commission), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 20, then scroll to p. 19)

Mr. Benjamin: Now, again, the Saskatchewan Bill of Rights prohibits discrimination because of race, creed, religion, colour, sex, marital status, physical disability, nationality, ancestry or place of

SECTION 15, "EQUALITY RIGHTS", DISABILITY

origin, and our resolution as it is worded does not mention creed, marital status or physical disability.

Could you comment on the distinction between creed and religion, how the courts may view the absence of the word "creed", or absence of the words "marital status", or absence of the words "physical disability"?

Mr. Norman: To begin with, sir, I think that "creed" is redundant. I may stand corrected by lawyers around the room more able than I, but in my experience it has been interpreted, on those few occasions when it has been considered, to be coterminous with freedom of conscience, religion. So if I can set that aside, I do not think its absence has any significance that one should be wringing one's hands over from the proposal.

Marital status, physical disability, and to those two could be added the categories which you have had advanced before you that exist in some jurisdictions that do not exist in Saskatchewan, and you have heard, of course, from organizations like the Mental Health Association seeking a further definition of disability beyond physical, to include forms of mental disability, retardation and so forth.

In my rather lengthy reply to Mr. Hnatyshyn's question I tried to address that problem and I think, unless there is some other proposal that I am not aware of in my attempt to stay abreast of this Committee's proceedings, the most sensible and workable response has been provided in the brief of the Advisory Council on the Status of Women. I am very uneasy personally about setting down in the constitution today's list. We just held hearings in Saskatchewan on amendments to the code just last week. One group came forward, the Mental Health Association, in seeking to have that included in the code, and they gave a very interesting statistic. They said that in 1975, just five years ago, in the election they polled members of the legislative assembly and asked them: did they support the inclusion of physical disability in the code? The statistic they came up with was quite shocking; a very, very small number said yes. A very small number only five years ago.

Only two years ago the entire legislature unanimously supported the inclusion, so if that is any indication this field is

[Page 20]

moving and progressing quite rapidly, and I think it would be a shame to draft an antidiscrimination provision in such a way as to impede the opportunity of an organization like the Association for the Mentally Retarded to achieve legislative gains because now they are facing a constitution which seems to say: you are out.

Senator Connolly: (inaudible).

Mr. Norman: Well, I am only saying they are making a very strong case in all jurisdictions to now be included in the legislation, and before you; I just cite them as a case in point.

The Joint Chairman (Senator Hays): Mr. Benjamin, go ahead.

Mr. Benjamin: Mr. Chairman, they want in, in terms of the Saskatchewan code?

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Mr. Norman: Yes.

Mr. Benjamin: But you do not think it should be in the national constitution because it is for such a long period of time and in areas such as this there is a continuous progress and change?

Mr. Norman: In a nutshell, yes, sir, that is my position. I think it is better to have the two-tiered system and a broad invitation to the courts to consider questions of unreasonable distinction. I keep referring to Mary Eberts brief, but it did impress me. She gave an example on marital status, she said if you accept the language that was put forward by the advisory council, well then, it may well be that, I think she used the example of the drivers licence application which discriminated on the grounds of marital status, would be struck down in the courts, by the court saying that is not a reasonable distinction. So you have covered marital status without putting it in stone but not putting something else in stone such as economic status or such as mental disability or sexual orientation which only Quebec has had the courage to put forward into legislation to date.

Ron Irwin & Ken Norman (Chief Commissioner, Saskatchewan Human Rights Commission), p. 24

Mr. Irwin: Just one last question. You say that physically handicapped, mentally handicapped should be on, I think you called it a tier system. Many people have come before us and said unequivocally the physically handicapped should be in the Charter, but I think your experience is important. You are suggesting there are different types of rights that the physically handicapped have and we have to look at each one and what is reasonable. I put to you that maybe it is a good idea to put the right to employment of the physically and mentally handicapped in the federal charter and leave the right to services and so on to the human rights charters?

Mr. Norman: Well, sir, I think that, as in my response to Mr. Benjamin on the question of the Charter, it is a constitutional document getting down to the detail of talking about a work place as distinguished from services or accomodation. I think that is a step in the wrong direction because even the work place alone, every human rights law in this country that deals with physical disability, and certainly those laws when they deal with mental disability, we have heard so from the Association of Mentally Retarded in their briefs to us as recently as last Friday, necessarily needs to have a reasonableness distinction standard because we have in this country all sorts of special employment provisions for people with multiple handicaps and disabilities, and they need to be addressed in a sensitive way by an agency or agencies, departments of labour included with human rights agencies, and I think to simply have a clear prescription is to invite the court to wonder what in the world to do with that, because it seems to be an invitation to upset a number of apple carts that have been put together by every government.

-----oOo-----

December 12, 1980: David Lepofsky (Member, Ontario Division Board of Management, Canadian National Institute for the Blind), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

(click [HERE](#) to view a PDF of the Special Joint Committee, Issue 25, then scroll to p. 6)

Mr. Lepofsky: [...] A handicapped person, in the case we are discussing today, namely that of a blind person, can learn through specific training to overcome the limitations imposed by their blindness, so that blindness no longer functions in most cases as “a handicap”; in fact it can become at times merely a marginal aspect of one’s life, compelling one to read in Braille rather than from print or to use a guide dog or cane to get from point A to B, rather than using one’s eyes, but nonetheless accomplishing substantially the same things as a sighted person would.

Once one has achieved this degree of independence, however, the problem that is confronted by the majority of handicapped persons is the fact that the public is not often ready to accept us as equals, not by reason of malevolence, but because of uniformed or misinformed attitudes, underestimating our capabilities by fear of the handicapped person—you might call it the “freak syndrome”, not perceiving a handicapped person as just a normal human being. This is manifested in several ways, many of which are frightening and harmful.

Job discrimination against the disabled is something which the public are only now becoming conscious of; the fact that once you have learned to do a job, the fact that you are ready to go out into the market and be competitive, you will find the only barrier you have is not your blindness or other handicap, but the employer who cannot believe you can function.

Housing and other facilities a landlord may not be permitted to rent because a blind person might be considered a health hazard and people do not want to look at someone who has cerebral palsy because it might be somehow unpalatable to look at in the opinion of some.

Educational systems are accessible primarily to nondisabled persons, but only to a limited degree to disabled persons, and, of course, as we all know, most buildings are not accessible.

These are functions of an attitude that the world simply does not contain handicapped people or that those handicapped people are not going to be out there trying to get job, trying to get into housing or buildings.

Our concern is generally with this attitude, and CNIB as well as other organizations have taken many steps, both with public education and also lobbying, to change this. Where this kind of problem with attitudes becomes perhaps most frightening and most requiring of action, is something which is addressed in the Charter of Rights which is before you.

Handicapped people in the struggle for equality and equality of opportunity find that not only do people discriminate in the access to jobs, buildings, facilities, services and housing, but that, in fact, legislators, persons passing laws have also experienced the same negative attitudes towards the handicapped and have passed laws which are in fact discriminatory.

Accordingly, the major thrust of our presentation is that it is necessary that they should be included in Section 15 of the Charter of Rights, the so called equality or nondiscrimination clause, and be referred to as a protected class, mentally or physically handicapped persons.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

[Page 7]

We are not looking at this as a means of getting jobs or housing, because that is something which is done at the federal or provincial Human Rights Code level, and we are actually lobbying for that.

Here, we are concerned with not just human conduct which is discriminatory, but legislation which discriminates,

Why should we be included in Section 15? Why handicapped people entitled to equality before the law and to the equal protection of the law?

To begin with, I am sure you have all come to the conclusion yourselves and you have heard from other groups, as the clause is presently drafted it is unarguable, unquestionable that handicapped persons are not entitled to equality before the law.

By this exclusion, it perpetuates in our constitution and attitude which, as I have mentioned, is prevalent in society, some notion of handicapped people as second class citizens, people who need to be taken care of, not given independence, protected, not given the opportunity of equality.

Inclusion in Section 15 for the handicapped would be consistent with what is the stated intention of the government with respect to the Charter of Rights. I refer to a statement made by the Minister of External Affairs, Mr. Mark MacGuigan, in speaking at a public forum on the constitution some weeks ago in Toronto, when I asked him about the handicapped issue. He had said that the Charter of Rights was central to the government's package of reforms and that equality for all minorities is central to the Charter of Rights.

If that is the intention, then that intention is thwarted by the present proposed Section 15 because equality for all minorities is not provided. Equality for some is the rubric or the essence of Section 15 as it stands, and it is a respectful submission of the Canadian National Institute for the Blind that, if the intention of the government is to, in fact, give equality to all minorities and is, given the fact that there are some hundreds of thousands or millions of handicapped persons in Canada all told, there is a minority that requires protection. That is not disputed. So the government's intention must only be manifested, it is our view, if we are included.

Moreover, if the purpose of the equality clause is truly to grant equality, one must look at its wording. It provides equality for certain minorities: in other words, it involves equality for some; and equality for some, I submit really means equality for none. It means that there are two levels in society, one level of people who are entitled to equality and one level who are not. And when you have two distinct classes such as that the term "equality" has been stripped of its meaning and rendered more of an illusion.

Accordingly, if equality is the goal, then it must be equality for all and "all" must include, we submit, handicapped. Now, as I said previously, Mr. MacGuigan in his statement, in answer to certain questions I put to him about the handicapped issue, acknowledged that the handicapped are not

[Page 8]

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

included and raised the question whether handicapped people need protection in a bill of rights, whether they need egalitarian liberties. His statement was that what the handicapped need are jobs and access to buildings, and these are economic not political or egalitarian liberties, and are not the kinds of things that are required in a constitution.

Now, in a world that was not our own, where economic liberties were generally being entrenched, I would be prepared to address issues such as jobs and architectural access in the constitution; but we are not going to address that today because we recognize the constraints under which Canada and the Parliament are operating. However, I would like to address the statement that Mr. MacGuigan made, speaking at that time on behalf of the government on the constitution. He said that what handicapped people need is not constitutional protection for equality, and it is our submission that Mr. MacGuigan’s view is inaccurate. In fact, when I pointed out certain things that I am about to point out to you, he explained that he had never heard of them before and would probably need to rethink the whole issue.

Legislation, as I said, in many instances discriminates against the disabled. You have heard this before but I believe that we will be the first handicapped group that will in fact itemize examples. Many statutes across Canada, both federally and provincially, which provide that everyone is entitled to a minimum wage when they are in the employment situation provide exemptions for handicapped persons. That is discrimination under or in law with respect to a legal right to a certain minimum wage.

Certain statutes explain when that right is to be administered and when not; certain do not. They merely say that the government has or a Minister has the power to give a licence to allow an employer to pay less than minimum wage, without giving reasons. This is not equality, this is discrimination, in our view.

Many statutes across Canada dealing with eligibility to sit on juries exclude blind persons from the right to serve on juries. Now, there are times when vision may be needed to serve as a juror. It is not our view that every trial should always be open for a blind person to sit on a jury; however, there are, and as a law student and soon to be a lawyer, I can speak with some limited knowledge of this, there are many cases where vision is not necessary and probably the lack of vision may be of benefit to a juror. So, legislation which just blanketly excludes blind persons without reference to their ability or inability to function as a juror, is discriminatory. The marriage legislation in Ontario provides in Section 7 that a marriage licence cannot be granted to someone who is mentally defective. It does not refer to whether their mental limitation is so serious that it would impede their ability to understand or consent to a marriage agreement. It merely excludes someone who is mentally defective from the right to be married. Such, in our submission, is discriminatory.

[Page 9]

The Family Benefits Act in Ontario, a piece of welfare legislation, provides in one section that certain handicapped persons who are in institutions and entitled to certain welfare payments may, by executive order, have those payments paid to a civil servant, a director of the institution or whatever—I do not have the details here, unfortunately—rather than to the handicapped persons themselves. It does not ever require that a handicapped person’s right to receive welfare can be impeded only if that person is incapable of managing their own affairs. It merely says any handicapped person, so that if it is a person who is perfectly capable of handling that money capably, nonetheless

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

their right can be taken away by executive action, perfectly legally under a statute of the province of Ontario. Such is legislation which discriminates.

The Education Act in Ontario, Mr. Chairman, provides that a handicapped person, whether physically or mentally handicapped, can be excluded from the right to go to their local elementary school if they are “incapable of profiting by instruction.” And then a separate school system is established to deal with those situations. Now education is a big and serious issue and I do not intend to address it in its totality here but I think it is fair to say that a provision that says that only where handicapped people cannot profit from instruction, only those people are excluded from the right to go to their local schools. If it is a nonhandicapped person who for some other reason is incapable of profiting from instruction, the statute does not exclude them from the right to go to their local schools. Such is unequal treatment; such is discriminatory, at least prima facie, in our submission.

Other legislation, and I will only deal with other legislation briefly, British Columbia schools legislation, Section 107 (5) provides, Mr. Chairman, in certain circumstances that an employee of a board of education who is totally and permanently disabled—and I could not find a definition in the act of that term—cannot be hired by the board until they lose their disability. Now, certain disabled persons cannot function in a teaching environment but others can. So such a blanket exemption, if applied against any person with any disability, would be, in fact, discriminatory; and I bring to your attention that blind persons are functioning both in Canada and the United States in the teaching profession.

I am not sure if that act would include blind people within their definition of total and permanent disability, but there is the risk, and that is discriminatory legislation with which we are concerned.

The Immigration Act passed by the government some couple of years ago in Section 19(1) provides a higher burden on a handicapped person who proposes to immigrate to Canada. If that handicapped person can meet all the requirements required of a non-handicapped person, able to support themselves, finding a job, et cetera, et cetera, they still must prove to a medical officer that they will not be an excessive demand on health and social services. There is not requirement that other persons wanting to immigrate have to prove that they will not provide such a demand on health and social services. Such separate treatment not applied to all immigrants is discriminatory in our view.

[Page 10]

I would submit that there are other laws that do discriminate but I think that these are sufficiently illustrative to respond to the suggestion that we need no constitutional protection, the legislatures can take care of it themselves. This is evidence of how the legislatures have taken care of handicapped rights to equality and moreover, Mr. Chairman, I think that it rebuts the suggestion made by Mr. MacGuigan a couple of weeks ago in response to my question, that handicapped people simply need rights to jobs; they can be provided by statutes, they do not need constitutional rights.

Moving on, Mr. Chairman, I would say that there are other reasons why we need to be included in the clause providing for equality. We are a substantial minority. We are not talking about a very small number of people. We have 30,000 clients registered at CNIB and Dr. Foreman can provide you with information of how many other visually handicapped people, as well as other

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

handicapped people, may well be out in the community. Some have suggested that there are one in ten persons in Canada handicapped in some way and therefore would benefit from the kind of constitutional protection we are talking about.

There are a couple of arguments that have been raised primarily by spokesmen for the government—in one instance, I think it is the Minister of Justice, Mr. Chrétien—against handicapped inclusion. One argument that he made is that we should not include it now because it is hard to define the term handicapped. We should wait until we can come up with a definition and put it in through an amending formula. Well, with respect to the Minister of Justice, I do not believe that position is tenable.

Firstly, if this Committee requires information on how to define handicapped, having looked over most Canadian statutes that contain the word and have various definitions over the past few days, I have found that some statutes do not even bother defining it but those that do have been able to effectively, and having done some research on this particular issue myself, I am more than happy to supply you with information to show that definition of handicapped would be no problem.

Secondly, leaving it to an amending formula is not a realistic proposition, because the process of amendment which requires a lot of lobbying, a lot of time, a lot of money, would not be in our view, probably manageable by handicapped persons being for the most part served by not altogether wealthy, non-profit organizations who live off of charity donations in many cases, and handicapped people themselves often living at or below the poverty line.

[Page 11]

So the amendment process will simply not be open to us as a practical matter, I submit. But more importantly, definitional arguments I do not think are persuasive in saying that handicapped persons not be included. Many terms are included, both in this Charter of Rights as proposed and in the British North America Act, 1867, which are much more vague than is the word handicapped, or mental or physical handicap. We note that in Section 15 they refer to discrimination on the grounds of religion. Mr. Chairman, I would invite anyone to define what religion means in a comprehensive manner. I think that that term, while we know that certain religions, Judaism, Christianity, Buddhism are religions, there will be many borderline cases where we do not know if those groups are religions or not. But that has not precluded the drafters of this Charter from including religion.

You will note in the British North America Act that under Section 91, criminal law is given to the federal government. We have had 100 years of litigation over what criminal law means in the constitution but that never stopped the framers of the BNA Act from including the words “criminal law” within that constitutional document.

And finally, in Section 1, of the proposed Charter, the words “reasonable limits” are used, which I would submit are incredibly harder to define, if not impossible to define, than are the words “mental or physical handicap”. Accordingly, I do not think one can simply avoid the issue or duck the issue because of definitional problems.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

The final reason that I would like to articulate for including handicapped in Section 15 concerns an argument that some have raised against it: namely, that the costs occasioned by including the handicapped would be excessive. I have several responses to that argument.

Number one, I would ask what those costs would be. I am not altogether clear and I would submit that there probably are not that many. Intuitively nothing really comes to mind as being excessively costly.

Secondly, I would submit that unless this Committee is going to go through the process of looking at every liberty enumerated in the Charter of Rights and say how much will this one cost, should we include it, is it too expensive?

Unless we are to do that with every single liberty then there is a certain inequality to simply looking at one group, namely the handicapped, and say that they will be excluded on the basis of a cost argument. And so, if that argument is presented before this Committee, I would ask that you bear that in mind. And finally, if that argument is presented before this Committee, that is that including handicapped would be too costly, I would ask you to bear the following argument in mind, or the following point in mind.

[Page 12]

To say that the cost is too excessive is to assume that handicap inclusion is the absolute lowest priority of every government in Canada, that we have spent every last dollar of revenue we have taxed and collected and that there is no money left. If you were to look at the priorities of the various governments, provincial and federal, of spending, you might find that there are others that are lower priority than handicapped equality and you might find that it might be worth including the handicapped in the constitution and perhaps let some more inconsequential programs go by the board.

I do not think it is fair to simply say it costs too much, therefore we cannot do it.

Moving very quickly through the other points of ours, because the other points we have made are ones which other groups have made as well, we recommend not only that handicapped be included in the Charter, Section 15, but we would prefer it if the Charter read something like equality before the law without unreasonable discrimination or without unreasonable distinction. Unreasonable discrimination meaning without restricting the generality of the foregoing, and then you can put a list of protected classes and include mental or physical handicap.

The reason we suggest this is because if an equality clause is truly to give us equality, it must give us equality with all others. And that is the way to do it.

It has been suggested before this Committee that perhaps it would be best to simply say equality before the law without discrimination, period, no reference to a list of protected classes. Now, that would be preferable to what is proposed in the present bill, but in our view, it is not desirable for the following reasons.

Firstly, it would mean the some thousands and thousands of dollars would be required going to court, appealing up to the Supreme Court of Canada, in order to get a precedent that decides

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

whether handicapped is a class protected by the clause. To avoid that kind of cost, delay and uncertainty, it could be easily included now without any such costs.

And secondly, Mr. Chairman, the fact of the matter is, if we have to go to court and argue it, there is no guarantee that we will be included by the courts. The courts take a very restrictive view of civil liberties in general, and handicapped civil liberties is a new area in Canadian law and therefore the risk is that we may never get in, even after an appeal process. So the only way of guaranteeing our rights is by including us.

Briefly, Mr. Chairman, we recommend, as is mentioned in our brief, that the words “equality before the law” and “equal protection of the law” are far too weak a means of protecting egalitarian liberties. You have heard this from other groups and we endorse the views that have been presented namely that the courts under the present bill have interpreted those words to not provide egalitarian liberties, and they have done it in an unequivocal way. And these words, even though there is one word that is different, these words are far too close, far too close to the existing [Bill of Rights](#) to ensure anyone that the courts will use this as a strong lever to nullify discriminatory laws. It is our concern that, once again the same amendment argument goes, if we get bad precedent, we have to go through the amending process, and we have seen in the State with the ERA battle how many years and at what cost that fight is and that there is no certainty of success.

[Page 13]

More importantly, it is our view that the courts have a tradition of taking a very restrictive view of civil liberties. Now, that is not by way of criticism or by way of anything less than respect for the members of the judiciary, but it is something which is, nonetheless, true, I think that it will be necessary and it is our submission that it will be necessary for strong direction to be given to the courts through very specific wording directing them to invalidate discriminatory legislation.

Moving to the end of my presentation, Mr. Chairman, it is our submission, as you will see in our brief, that Section 1 should not govern either Section 14 or Section 15. It is our view that there should be no circumstances where the right to an interpreter, which a deaf, blind or just a deaf person may require in court, should ever be taken away. Why is it either in war or emergency that a deaf-blind person on trial should be denied an interpreter to know what the case is against them. It is too basic and a denial of natural justice.

Moreover when should unwarranted discrimination be permitted? At wartime? At peacetime? In the case of an emergency? It is hard to imagine a situation where it is justifiable, and therefore we have recommended, as have other groups, that Section 14 and Section 15 be absolute rights, rights not subject to Section 1.

Alternatively, if that point of view is not acceptable to the Committee, it is our submission that the wording in Section 1 is far, far too broad. You have heard all the arguments before, we can only reiterate them, that Section 1—labelled by some as the Mack truck provision—will in fact make the rest of the Charter of Rights a virtually worthless and impotent means of protecting civil liberties, In particular, the generally accepted view of the public with respect to handicapped persons is that they are often not capable of taking care of themselves, not capable of maintaining a job, not capable of self-sufficiency, and therefore the kinds of laws that I have discussed previously that are discriminatory would be under Section I generally accepted in a free and democratic society, passed

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

by these kinds of Parliaments. And accordingly, if Section 1 remains, and if Section 15 is still subject to it, it is our view that Section 1 must be very narrowly constrained to protect minority rights and in particular, handicapped rights.

Finally it is our submission that Section 29, (2) which provides that the equality clause will go into effect later than all other parts of the bill should be repealed, simply because there is no good reason in our view why egalitarian liberties should be delayed. If anything, they should be accelerated.

[Page 14]

In conclusion, I would like to make the following points. Our concern is that there is a danger of misleading people if the Charter does not include the handicapped. There is the danger that people will believe that in Canada under such a provision, egalitarian liberties are truly safeguarded, there is equality for all, Without handicapped inclusion such is not the case. And it is not only unfair to handicapped persons to deny them equality, but it is a risky venture for the public to be misled into believing that all minorities are protected when they are in fact not.

Our concern, as I said at the outset, is dealing with public attitudes. Public attitudes are something which we must battle at various levels. At the constitutional level we are battling public attitudes as they are manifested through legislation and this is a battle which is both serious and crucial.

Finally I would close by saying that there is an oft stated adage that justice is blind; in fact it is a cliché.

Our concern—and the underlying concern of this presentation—is that while justice may have had the opportunity to experience blindness, we are asking for blind persons, as well as for other handicapped persons, to be given at last an opportunity to experience justice.

Senator Donahoe, David Lepofsky, Vic Althouse, Senator Connolly, Dayton Foreman (Vice-President, National Council. Canadian National Institute for the Blind), p. 15

Senator Donahoe: [...] I was interested to hear the illustration that was given of discrimination possibly against an unsighted juror, because in my experience as an Attorney General for many years, I was once faced with the application for appointment as a Crown Prosecutor by a blind person.

He was an excellent lawyer, a good student and so on; but he was asking to be made a Crown prosecutor to conduct criminal prosecutions.

I would ask you to believe that it was a matter of real difficulty for me to determine whether or not that handicap, in fact, was of a nature which detracted from his ability to do the fullest and most complete job in that particular capacity.

I want to say that I did, in fact, appoint the gentlemen and that he conducted himself with great credit for a number of years.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

But I wonder if the person who suffers the handicap can appreciate the difficulty that a person in the position in which I was at that time might have had in determining whether they are in fact discriminating against that person because of the handicap or whether they are in fact merely endeavouring to see that their obligations and responsibilities are discharged in the best possible manner.

However, I do not wish to say or to ask too much, because I think your presentation was, indeed, excellent and from the point of view of the organization for which you are speaking and the people whom it represents, it has been exceedingly well put here this morning.

I would like to ask this simple question. Do you believe that the position of the handicapped will be substantially improved or enhanced if this procedure is followed? The procedure that is suggested is to entrench certain rights.

You have indicated that you find the suggestions inadequate, insufficient and in need of substantial amendment, and that those amendments should be specifically directed towards the class of person for whom you are speaking here this morning.

Do you feel that the position of the handicapped is going to be very much improved and very much enhanced if this procedure is followed with or without your suggested amendments?

Mr. Lepofsky: Mr. Chairman, to answer both your points, understanding the fact that an employer or service must go through a very difficult analysis and thought process to decide what one is capable of, is something which is only too well understood by any handicapped person, because before someone like myself decided to go into law school I had to make that same analysis.

[Page 16]

So it is something which not only I have thought about, but I would think about it before any of my potential employers have thought about it.

It is a very difficult process. The equality clause, if it included the disabled, would give us a right, in the instance where a legislature had gone through that thought process and in fact had made a wrong decision in the passage of laws which end up discriminating, would give us a right to appeal that to the court and to argue that it is an unreasonable distinction which is being drawn against handicapped persons.

My first point would be, Mr. Chairman, that this would provide a means or mechanism for handicapped persons and other interested groups, to challenge legislation which is discriminatory. If these provisions are not put in, then it would signal to the disabled that it is the prevailing view in Canada that handicapped people are not entitled to equality before the law and that the kinds of discrimination that are experienced by any handicapped person in their every day life are in fact representing a pervasive view which in fact has been articulated through the actions of the framers of the new constitution.

On the other hand, if this provision is included as we have proposed, several benefits would accrue, I would submit. The first is that next year being the International Year of the Disabled Person, it

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

would show Canada as doing what could be the best possible move to ensure disabled persons equality, which is to pass a constitution enshrining their rights; secondly, it would be a signal to the Canadian people that as regards handicapped persons, who in the past have either been a forgotten minority or a lesser class of citizen—and I say this was not intentional or out of malevolence; but it has happened nonetheless—that a new era has dawned and that as deeply felt a concern is being presented to Canada as can be expressed through a Charter of fundamental rights as acknowledging this liberty.

As I say, some of the more odious legislation, some of which I have already enumerated, would be amenable to attack. I know that certain lobbying has succeeded in Ontario, and lobbying by certain groups have inspired the Ontario legislature, after 100 years of having similar legislation to finally change it, and it is now about to get the Royal Assent, but the process of getting the reform has taken a long time. Had we an equality clause we could have had it adjudicated upon and probably won the matter possibly much more quickly. It was only, frankly, out of luck, that in our view this amendment ever came through.

The Joint Chairman (Senator Hays): Thank you very much.

We have Mr. Althouse followed by Senator Connolly.

Mr. Althouse.

Mr. Althouse: Thank you, Mr. Joint Chairman.

Other evidence seems to suggest that the disabled and handicapped people suffer an unemployment rate of between 70 per cent and 80 per cent. I note in your remarks this morning that you mentioned employers who do not believe you can function as one of the big handicaps you are facing.

[Page 17]

Is that the greatest difficulty faced by blind people, for instance, access to opportunity to function? Will the proposed amendment encourage this access to opportunity in your opinion?

Mr. Lepofsky: I would agree that the access to jobs and other facilities is perhaps the greatest problem. As I said, it is the attitude to the public that is the greatest problem and perhaps is the worst manifestation of it, aside from the other manifestation I have mentioned, namely the legislative discrimination.

Our proposals would not require employers to hire a handicapped person who can do the job. That is something which is dealt with by the Human Rights Code. I would say that we are involved in lobbying along with many other organizations for amendments to such laws. I am personally involved in that and could give you a lot of information on the subject if necessary.

It would, however, have two beneficial effects on the employment situation. The first is that, by entrenching this in a charter of rights, as I have said before, it would be a signal to the Canadian public that handicapped people are entitled to equality. That is an educational effect which would be of profound importance and help.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Secondly, there is the possibility and I did not mention this in my list of discriminatory legislation, because a good law student is told that you should use your weakest argument at the end or drop them altogether; but the federal Human Rights Code provides protection for the handicapped in the area of employment, but does not refer to them in the area of access to services or goods. I would say that is a form of discrimination. As you know, the Canadian Human Rights Commission has recommended amendments to cover that.

I would be interested to know if we could build a case that we are getting unequal treatment under the Human Rights Code, since in certain provinces we are not included at all in the code, and in other provinces we are only given partial protection.

But that is a case as to which, while I would like to argue it personally, I am not overwhelmed by the fact that it would be successful. But the most important point is the educational effect on the public and that laws which are a barrier to education, a barrier to equal opportunity, and signals second-class citizenship for the handicapped to the public, would be attackable by us.

Mr. Althouse: In this regard, the slow movement towards access to jobs and equal access to buildings and services, I note one of the supporting groups, the Federation of the Physically Handicapped for Ontario, has mentioned in supporting documents which were passed out along with your brief, that Section 29, they make the point—in the proposal before us places a restriction on the implementation of such rights; under Section 29 it is stated that there will be a three-year waiting period, and they would not come into effect any sooner than the amending formula.

[Page 18]

What is the reaction of your group to this waiting period? Your group of handicapped individuals seem to be the only group that have been singled out for this by subsection (2).

Mr. Lepofsky: I would say it is a concern of ours. The delay, if anything, is undesirable; and we would prefer to have seen an equality provision protecting us in effect ten years ago. However, I am bound to confess it is not our major concern. Our principle concern is getting into the bill in one form or another at all.

The Joint Chairman (Senator Hays): Thank you very much.

Senator Connolly.

Senator Connolly: Thank you, Mr. Chairman.

First of all, we are all very happy indeed to have the CNIB here, because over the years this organization has done a tremendous amount, and I think perhaps the witnesses might agree that the important feature of that work is the fact that they have helped so much to promote the integration particularly of blind people into the community, into society and all phases of Canadian life. This is a great achievement on the part of the CNIB and of the people who work with them.

But may I also, on a personal basis, congratulate Mr. Lepofsky for the very lucid, very comprehensive statement that he has made. I predict that he is going to be a very good lawyer. I would hope

SECTION 15, "EQUALITY RIGHTS", DISABILITY

that he might become a member of Parliament, but I would tell him immediately that he will not be the first person who is without sight who has been in the House of Commons.

I do not say that as a joke. There are lots there who perhaps physically see, but perhaps mentally do not. That does not, of course, apply to the Senate. We have had people without sight in Parliament: Trevor Morgan was here in the early 1970's on the Conservative side.

The Joint Chairman (Senator Hays): Senator Connolly, I think Doctor Foreman would like to ask you a question.

Mr. Foreman: I was just going to thank the Senator for his kind remarks about the Institute and about Mr. Lepofsky. I would also like to thank the Committee from the point of view of letting my guide dog in.

Senator Connolly: Good, good. I think I can remember a man—I believe his name was Estey or something of that nature, but whatever his name was, I think he may have be the first in Parliament, this man whose name escapes me; and for this I apologize. There is a great story of an exchange between Mackenzie King, R. B. Bennett and this man at one time over the Doukhobors—one of the great stories on the record of Parliament.

But I would like to ask Mr. Lepofsky this. You have been talking, and the other groups which have represented the handicapped have also been talking, about the importance of integrating the handicapped community into the normal stream of public life.

I think great strides have been made as education has advanced, and as public education in this respect has improved. I do not ask you this as a trick question, but I wonder whether, by segregating the handicapped you are not, to use your own words, signalling to the disabled that they are forever a segregated group?

[Page 19]

Would your position not be stronger before the law, even before these provincial laws which you have criticized here, if a nondiscriminatory clause applied equally to you, whether you are handicapped, equally to me, whether I do not happen to be physically handicapped, maybe mentally and so on; but would it not be better in the long run not to have a special category set out in a constitution which, presumably, is to last for a very long time?

Mr. Lepofsky: I can answer that question, Mr. Chairman, briefly. First, I thank you for your compliments with respect to my potential future in Parliament; but my immediate concern, perhaps a little myopic, is that I have another four bar examinations to write and I will continue to be a law student for a lot longer.

On the question of integration generally, I must say, particularly under the leadership of the new management of the CNIB with Mr. Mercer, among other things, CNIB as well as other organizations are becoming much more active in adopting integration of handicapped people into society as a goal, phasing down and phasing out segregationist programming and lobbying for equal rights legislation; this is demonstrative of our kind of work.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

While there has been segregation, in fact somewhat imposed by handicapped organizations over the years, this is something which is changing, and I would say that the three gentlemen in front of you representing the CNIB are hoping and striving to see that change continue and accelerate.

As to whether it is somewhat discriminatory or special treatment to mention us expressly in the equality clause, I have two answers or brief points to make to that. First, is that, as I have mentioned in my general remarks, if you do not put us in expressly, and merely say equality before the law without discrimination period; then, you are leaving it to us to have to litigate and go to court and spend thousands of dollars and try our luck.

First of all, I do not think we could afford it too readily, and secondly, we are at risk that we would lose. Frankly, having read a good deal of civil liberties case law, which is a particular area of law which interests me, in Canada our courts have a restrictive or very narrow approach to the treatment of civil liberties and only enforce them, as evidenced by the treatment of the [1960 Bill of Rights](#), when there is no way out: and even then they do not.

So that my concern is that we may well not win such a case, no matter what the intention is of the Senate, no matter what the intention is of the House of Commons in passing this bill. The only way we could be sure to be in, speaking from a legal point of view, is to put us in. Saves us money and improves our chances.

-----oOo-----

January 6, 1981: Svend Robinson & Diana Davidson (President, Vancouver People’s Law School Society), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 32, then scroll to p. 21)

Mr. Robinson: [...] There have been two suggestions: either we expand the prohibited grounds contained in Section 15(1); and, alternatively, if that is not possible, that we eliminate the narrow grounds which are contained in Section 15(1) and just have a general prohibition against unreasonable distinction.

Mrs. Davidson: Yes.

Mr. Robinson: Would you like to comment on the legalities on either of those routes, and secondly, perhaps you might like to comment on this. I understand you have read some of the transcripts, and if you have read some of the discussions with respect to some of the additional grounds which might be contained, the handicapped, political affiliations or sexual orientation, do you have any particular comments on some of the concerns which have been expressed with respect to those additional grounds which might be added?

Mrs. Davidson: If it is the intention of this group and the others, whoever they may be who will be working on the final draft, really to protect people—and it should be—then they should say so in clear terms because we cannot rely on the judiciary to do it for us. That has been clear.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

With regard to the addition of these grounds, first of all, with regard to political affiliation, it makes little sense to have a protection in Section 2, and no protection in Section 15.

With regard to the physically or mentally handicapped, it is not possible to represent ourselves as civilized people when we have that large group of persons who are excluded.

We have just prepared, with the law school, a very powerful film on the handicapped, and the young man who opened it, the president of the paraplegics association, and who closed the program, is such an incredible fighter, and he, in addition to other fights, fights for every word, and said at the end of it "I do not want to be taken care of. I want to take care of myself." That is very, very moving! It is a totally outrageous situation that we do not have that protection in there.

-----oOo-----

January 12, 1981: Jean Chrétien, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 36, then scroll to p. 14)

Mr. Chrétien: [...] I know that many witnesses have recommended either that the grounds for non-discrimination be widened to include handicapped persons or others or that there be no specific enumeration and that more discretion be left in the hands of the courts. The government has studied these representations with great care.

The position of the government is that certain grounds of discrimination have long been recognized as prohibited. Race, national or ethnic origin, colour, religion and sex are all found in the [Canadian Bill of Rights](#) and are capable of more ready definition than others.

I want to make clear that the listing of specific grounds where discrimination is most prohibited does not mean that there are not other grounds where discrimination is prohibited. Indeed as society evolves, values change and new grounds of discrimination become apparent. These should be left to be protected by ordinary human rights legislation where they can be defined, the qualifications spelled out and the measures for protective action specified by legislatures.

For example, it was only four years ago that federal human rights legislation specifically provided protection for the handicapped in the area of employment.

Recently the Special Parliamentary Task Force on the Handicapped chaired by David Smith has recommended changes and improvements in the [Human Rights Act](#)²⁶ with respect to the handicapped. The government will be acting on some of the recommendations of the Task Force. The government is also proposing to act on some of the recommendations made by the Canadian Human Rights Commission in this area and will propose amendments to the Human Rights Act.

But if legislatures do not act, there should be room for the courts to move in. Therefore, the amendment which I mentioned does not list certain grounds of discrimination to the exclusion of all others. Rather, it is open-ended and meets the recommendations made by many witnesses before your

²⁶ See footnote 2.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Committee. Because of the difficulty of identifying legitimate new grounds of discrimination in a rapidly evolving area of the law,

[Page 15]

I prefer to be open-ended rather adding some new categories with the risk of excluding others.

Lorne Nystrom & Jean Chrétien, p. 30

Mr. Nystrom: I would like to refer now to a couple of things in the Charter of Rights itself.

You have said on page 7, for example, of your comments to the Committee tonight, and I quote:

The work of the Council

and this is of course the Advisory Council on the Status of Women,

The work of the council has greatly influenced the government as have the presentations of the many witnesses who have spoken on this subject on behalf of women's groups, the handicapped, and others.

The government has been, as you say, greatly influenced by the groups that have appeared and you have moved some considerable distance in terms of women's rights, and I think the suggested amendment is very interesting, one we will take a very serious look at. You have moved some distance in some other areas.

We have also had handicapped groups before the Committee and you said that the groups that have appeared have greatly influenced the government, and I would like to ask you why you do not include in the Charter of Rights any reference to the handicapped, to the physically disabled, to the mentally disabled in our country.

We have had some groups before us who came and made some pretty good arguments, and you said you have been greatly influenced. I would like to know where the influence is.

[Page 31]

Mr. Chrétien: The position is that the list enumerated there is not exclusive and any other rights on discrimination the court could intervene.

The problem is we say that these rights have to mature in the Canadian society. For example, we will still have a Human Rights Commission and we will still pass legislation on different groups to make sure that their rights are protected, but they have to mature and this list that I have enumerated, excluding the others, we have opened up that clause so that other types of discrimination can be taken care of by the courts, if Parliament and legislative assemblies do not intervene.

But to start to enumerate more in that category where their rights are starting to be protected by legislation and so on, and if there is discrimination against handicapped and so on, we say that the

SECTION 15, "EQUALITY RIGHTS", DISABILITY

court can intervene even if we do not want to enumerate them at this time because many of those rights are difficult to define. It is in the process of maturing, that is why it is not there.

But before, the clause was limiting the element of discrimination. Now it is not limiting them; other types of discrimination can be covered by the courts too.

Mr. Nystrom: I remind you, Mr. Minister, that this year is the International Year of the Handicapped, the year 1981, or the International Year of the Disabled, rather, and I would like to know more of what you mean by rights have to mature. Why are the handicapped singled out? Why are the disabled singled out?

It seems to me that we should be enshrining some rights for them in our constitution. If you are not sure what kind of rights they are, perhaps the wording does not have to be as tight as in some other cases, but surely to goodness there can be some reference that we cannot discriminate against the handicapped.

Mr. Chrétien: I referred in my speech that we have enacted some legislation in relation to the handicapped in the last four years. There will be some more. We still have the Human Rights Commission working on that and we have to prepare some amendments.

But we have opened up the clause so that the clause is not limiting the type of discrimination to the enumeration of discrimination as mentioned.

Just to give you an example. In the Charter of Rights as presented by Mr. Diefenbaker, the word "age" was not there at that time, but over the years this has gained maturity and it is finding its place there, and the first enumeration we had was limiting the type of discrimination. We have opened up to other types of discrimination that can be covered by the courts if the Parliament or assemblies do not take care of the problem.

[Page 32]

So I do think that it is a very important amendment but we do not want to have the problem of definition at this time because it was creating too many difficulties.

Mr. Nystrom: In your personal opinion, Mr. Minister, has the right to enshrine the rights if the handicapped matured by this time?

Mr. Chrétien: If there is positive discrimination against handicapped and nobody is acting, in my reading of that section, the courts could intervene.

Mr. Nystrom: Why not enshrine it then if it has matured?

Mr. Chrétien: They are, because the clause is open.

-----oOo-----

SECTION 15, "EQUALITY RIGHTS", DISABILITY

January 14, 1981: Svend Robinson & Jean Chrétien, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 37, then scroll to p. 21)

Mr. Robinson: Mr. Chairman, turning to another area of the proposed Charter of Rights and that is the question of the prescribed grounds of discrimination, Mr. Minister, I suggest to you that you have betrayed the hopes and the expectations of many, many Canadians in refusing to include as a prescribed ground of discrimination, disability. This Committee heard witness after witness appearing before us insisting that disabled Canadians, whether that be physically disabled or mentally disabled, should be entitled to protection from discrimination.

[Page 22]

This, Mr. Minister, is the international year of the handicapped.

Now, your justification, your rationale for not including the handicapped in your speech before this Committee was that there were difficulties in definition and that society is still evolving.

I would like to take up those two questions. Are you saying, Mr. Minister, are you suggesting that as of today, the day that you are proposing this Charter, that society has not evolved in Canada to the point that the handicapped deserve to be protected from discrimination?

Mr. Chrétien: We say that we have passed legislation on the subject. I just say that the problem is that there are many types of handicaps in this society. And this is the nature of the problem that we are faced with.

We all have handicaps. The way I speak English, some would say it is a handicap for me, others would say it is an asset, I do not know.

There are all sorts of handicaps that exist.

Mr. Robinson: Are you talking, Mr. Minister about substance or about. . .

Mr. Chrétien: I am talking about a substance that is difficult to define satisfactorily, what is a handicap, to enshrine it in the constitution at this time.

There is legislation that has been passed. There have been recommendations, for example, by many of the Human Rights Commissions, making recommendations to improve the nature of our legislations on that. There is some legislation that has been passed and still is being passed in the different legislatures in Canada.

Of course I am not happy, personally it would have been much easier to just say yes to you because I am quite uncomfortable to be obliged to say that the best advice I am receiving is that it is not appropriate to put it here at this moment.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

But in order to cope with this problem, if you look at Section 15, what we have done is we have tried in Section 15 to not limit the list. We have opened up. There was some recommendation, for example, that we should not list anything at all.

Some of the briefs that you have received said: take out all the lists you have in there and just talk in general terms, in terms of discrimination.

So we have opened it up, we have a descriptive list of the six items that are there and we say that the others will evolve and if there is evident cases of discrimination that the court could intervene because the list is not limiting the areas of discrimination. It is descriptive of areas of discrimination.

So in that way I am advised that the court could intervene. Now you say why do you not just use the word, and put after 6 as part of the description, the seventh one, that would be disabled.

Mr. Robinson: That is right.

[Page 23]

Mr. Chrétien: I would like to do that. But I am told and the best advice I am receiving, is that it is premature at this time. I am willing to look again at it, if it could be done, but. . .

Mr. Robinson: Mr. Minister I suggest that you look again at this particular section. I suggest you go back to your advisors. You yourself have indicated that the handicapped are dealt with in federal legislation. Well, if the handicapped area dealt with now, in federal legislation, there must be some definition. You must know in that legislation who it is you are talking about there. Why can we not apply the same kind of definition in this particular Charter.

Let me ask you at this point, are you prepared to go back to your advisors and at least to seriously consider, possibly adding this as a ground, an additional sixth ground, the question of disability following the advice of these many witnesses, listening to the concerns of disabled Canadians, listening to the Committee, the special committee on the handicapped, the chairman of whom appeared before our Committee asking that this be included.

Mr. Chrétien: You understand my problem. Yes, I will go back to my advisors, they are here. They are not such a big gang, they are all listening to this discussion. Of course there have been many members of the Parliament who have been on that committee; the chairman, David Smith, keeps talking to me about it and so on.

But at the same time we are not here just to do something that is pleasant to do. There is nothing that would please me more to add that word there. But I have at the same time to make sure that we are not creating a problem that will be very difficult for the administration of the law, the judgment of the court, the legislature and so on.

So, we say that this is an area of evolution in the law that has not attained the same maturity as other areas. We have opened up to make it possible for the court to intervene in obvious cases of discrimination to persons if they are handicapped, without having to put the word handicapped.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Because after that I am told that, yes, there is a lot of types of handicaps, and this creates some problems for the court to make decisions.

Myself as a human, as a politician and as a man who has always been preoccupied with the disadvantaged groups in this society, I am not happy to give you that answer and I will look back again if I can but at the same time sometimes you do not do everything you want to do.

I admit very clearly that it is not perfect what I have here.

Mr. Robinson: One final question if I may, and naturally I appreciate the Minister’s undertaking to have another look at this important question; and his recognition that while there may be problems for the courts that there are problems for

[Page 24]

hundreds of thousands of handicapped in this country as well that would be remedied by this kind of amendment, and they will be watching your response, Mr. Minister.

Mr. Chrétien: I intend to introduce legislation to that subject.

Mr. Robinson: Legislation that is given today can be taken away tomorrow, Mr. Minister.

Mr. Chrétien: I know, I know. It is better than nothing at all.

Mr. Robinson: Mr. Minister, we are not asking for nothing at all.

Jean Chrétien, p. 27

Mr. Chrétien: [...] Similarly, on the question of the disabled, when the law in this area evolves to maturity, it would be very nice then for the premiers and the national government to cause an amendment to the Canadian constitution to include them precisely. I do not think that would be a problem. Every government, whatever its stripes, in Canada has always shown a lot of preoccupation for the disabled.

Ron Irwin & Jean Chrétien, p. 28

Mr. Irwin: On the handicapped, Mr. Minister, did I hear you to say that you will be introducing legislation to improve the federal human rights act with regard to the handicapped?

Mr. Chrétien: There are some recommendations that were proposed by the Human Rights Commission on that. We are studying those recommendations and we intend to introduce legislation on the subject when the matter is ready.

David Crombie, p. 47

On the question of substance, if I could, Mr. Chairman, I wanted to make an initial comment with respect to the questions raised by Mr. Robinson with respect to not including the handicapped and

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

disabled, both physical and mental, the Minister’s decision not to include them on the basis that there would be some difficulty with respect to definition.

-----o0o-----

January 14, 1981: David Crombie, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 38, then scroll to p. 47)

Mr. Crombie: [...] On the question of substance, if I could, Mr. Chairman, I wanted to make an initial comment with respect to the questions raised by Mr. Robinson with respect to not including the handicapped and disabled, both physical and mental, the Minister’s decision not to include them on the basis that there would be some difficulty with respect to definition.

-----o0o-----

January 16, 1981: Svend Robinson, Jean Chrétien, & Bryce Mackasey, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 39, then scroll to p. 16)

Mr. Robinson: [...] I would like you to examine that question, Mr. Minister, perhaps a bit more closely and certainly it will be returned to in the course of amendments, but I would like now to turn to Section 15 of the proposed Charter of Rights, to return to Section 15 of the proposed Charter of Rights and to deal with an argument that has been made and a statement that you made in your statement on Monday night to this Committee.

You indicated that you have responded to some of the concerns of various groups and that rather than restricting the

[Page 17]

proposed grounds of discrimination to those originally set out in the Charter of Rights, that you are leaving this open ended, that you are allowing for the possibility that the courts might interpret this to include additional grounds of discrimination.

Am I paraphrasing what you said accurately, Mr. Minister?

Mr. Chrétien: Yes, You are reading my text.

Mr. Robinson: No, I am not reading your text. If that is the case, are you then saying that immediately following the passage of this Charter, when it becomes law in Canada, not sometime in the future but immediately following that, that it is your intention and your understanding that a court might interpret this Charter in such a way as to include a prohibition of discrimination on the grounds of disability.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Mr. Chrétien: If it is an obvious case, yes.

Mr. Robinson: So you think that immediately following the passage, that that is a possibility?

Mr. Chrétien: No, Mr. Robinson, because there are three years after on that, on this section. We have said that on a nondiscrimination clause, we have agreed that there would be three years lapse between the passage of it here and approving it, being proclaimed after it had been passed in London there would be a lapse of three years, But yes, at the end of three years.

Mr. Robinson: But at that point it is your intention in making this proposal that at least the courts would have that opportunity to interpret this more broadly to include discrimination on the basis of disability?

Mr. Chrétien: Yes. I say it is broad. There are other types of discrimination. The courts then look . . .

Mr. Robinson: But specifically disability you say yes?

Mr. Chrétien: If it is discrimination because of disability, I would say yes.

[...]

[Page 18]

[...]

Mr. Mackasey: Mr. Chairman. my supplementary naturally goes to Mr. Robinson's statement and it is not meant to be argumentative. Mr. Minister.

My position on the referendum vis-à-vis the possibility of it being used to remove individual rights. I remember, recalling earlier in the session, arguing with Mr. Robinson that it was much more likely that if a referendum were to be used in this area at all. it could be to add to human rights.

I visualize as you do. because you have to go to some extremes. Mr. Minister, to presume that we go to a national referendum with all the laborious procedure of getting majorities in the legislatures and then 51 per cent of the people to offset something that is in the human rights.

I could see a different scenario. I suppose, if a province was flagrantly discriminatory despite our constitution and the bill of rights in its approach to citizens of its own province, say, for instance, aboriginal people of franco-Manitobans or English Quebeckers or whatever.

I cannot visualize that happening; but it would seem to me that if the referendum is to be used at all in its approach to that section, it would be to add, to strengthen, not to weaken the bill of rights. Am I right or wrong on that?

Finally, there is the possibility, Mr. Minister, of adding the category of disability, and can you be persuaded to reconsider and is there a possibility because of the work going on by the particular

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Committee of the Commons and the fact that there is international recognition of the problems of disabled people; you have mentioned some groups in particular, leaving the rest open—would you reconsider with your officials all the ramifications of adding to Section 15 some recognition of the particular problems that this category of Canadians has to face, a fact which the public are now only beginning to realize? It would fall into the category of—it could almost be classified as a fundamental freedom.

Mr. Chrétien: I am willing to review that and see if it can be added. But I cannot give you any answer.

-----o0o-----

January 20, 1981: Jake Epp, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 41, then scroll to p. 99)

Mr. Epp: [...] Clause 15(1): We feel that the rights of persons with mental or physical disabilities should be protected. The so-called handicapped clause. Accordingly we are proposing an amendment to meet that objective:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

It is the last four words we are adding.

-----o0o-----

January 21, 1981: Svend Robinson, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 42, then scroll to p. 8)

Mr. Robinson: [...] We proposed a new Clause 15 with three subclauses as follows:

15(a) Every person is equal in, before, and under the law and has the right to equal protection and equal benefit of the law, and to access to employment, accommodation and public services without unreasonable distinction on grounds, including race, national or ethnic origin, colour, religion, sex, age, marital status, sexual orientation, political belief, physical or mental disability or lack of means.

And there will be a Clause 15(b) to the effect that sex, race, colour, religion, national or ethnic origin shall never constitute a reasonable distinction for the purposes of Clause 15(a); and finally Clause 15(c) the affirmative action subsection, that Clause 15(a) does not preclude any law, program or activity which has as its object the amelioration of conditions of disadvantaged groups, including those who are disadvantaged because of grounds specified therein.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

Mr. Chairman, as I say, I apologize for not having these in writing, and they will be forwarded very shortly in both French and English and certainly at the time the amendments are moved there will be elaboration on the objectives that we attempt to achieve on these amendments.

-----oOo-----

January 28, 1981: Serge Joyal (Chairman), Eymard Corbin, Svend Robinson, David Crombie, & Jean Chrétien, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 47, then scroll to p. 88)

On Clause 15—*Equality before the law and equal protection of the law.*

The Joint Chairman (Mr. Joyal): I will invite, then, honourable members to take the amendments in relation to Clause 15. There are a certain number of amendments dealing with Clause 15, especially taking into account that very clause of the proposed motion has two subclauses, Clause 15(1) and Clause 15(2), and in order to deal with the two subclauses in order I would like to invite honourable members to take the amendment identified G-20, Clause 15(1) page 6.

There are two subamendments, to that amendment. The first subamendment that the Chair will invite honourable members to take is the one identified N-21, Clause 15(1), page 6, revised, that is the one with the word “revised” on it, and the next subamendment in relation to the same main amendment is the one identified as CP—8(1), Clause 15, page 6.

So it means that the first subamendment we will be dealing with is the last one that I have mentioned, CP-8(1), Clause 15, page 6, but before we deal with that second subamendment I would like to invite Mr. Irwin to move, or Monsieur Corbin, to move the one identified G-20, subclause 15(1), Page 6.

Monsieur Corbin.

M. Corbin: Merci, monsieur le president.

Or, je propose

Que le paragraphe 15(1) du projet de Loi constitutionnelle de 1980 soit modifié par substitution, à la rubrique qui précède la ligne 1, et aux lignes 1 à 5, page 6, de ce qui suit:

«Droits à l'égalité

15. (1) La Loi ne fait acception de person ne et s'applique également à tous et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe ou l'âge.»

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Mr. Chairman, I would like to move that the heading preceding Clause 15 and Clause 15(1) of the proposed constitution act, 1980, be amended by striking out the heading immediately preceding line 1 and lines 1 to 5 on page 6 and substituting the following:

"Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex or age."

[Translation]

Thank you, Mr. Chairman.

Le coprésident (M. Joyal): Thank you, Mr. Corbin.

[Text]

I would like to invite Mr. Robinson on behalf of the New Democratic Party to introduce the subamendment revised N-21, Clause 15(1), page 6.

Mr. Robinson: Thank you, Mr. Chairman.

[Page 89]

I am very pleased to move the subamendment as follows ...

[...]

Mr. Robinson: [...] The amendment is as follows, first of all in English, this is to the proposal of the government, I move that the proposed amendment to Clause 15(1) of the proposed constitution act 1980, be amended by (a) striking out everything immediately following the words "Every individual is equal" and substituting the following:

in, before and under the law and has the right to equal protection and equal benefit of the law, and to access to employment, accommodation and public services, without unreasonable distinction on grounds including sex, race, national or ethnic origin, colour, religion or age.

And then, Mr. Chairman, there are six additional subsections. The first is: (b) adding to Clause 15(1) the following: "physical or mental disability,"; (c) adding to Clause 15(1) the following: "marital status,"; (d) adding to Clause 15(1) the following: "sexual orientation,"; (e) adding to Clause 15(1) the following: "political belief,"; (f) adding to Clause 15(1) the following: "lack of means"; and (g) moving the word "or" so that it appears immediately after the penultimate proscribed ground of discrimination.

Mr. Chairman, those are our proposed amendments to Clause 15(1) to recognize some very fundamental and important grounds of discrimination which are not recognized in the government's proposal.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

In French, Mr. Chairman, if you would like me to read this in French.

Il est proposé

Que le projet de modification du paragraphe 15 (1) du projet de Loi constitutionnelle de 1980 soit modifié par:

a) substitution, à ce qui suit le membre de phrase «La loi ne fait exception de personne», de ce qui suit:

«Tous ont droit à la même protection et au même bénéfice de la loi, ainsi qu'à l'accès aux emplois, au logement et aux services publics, indépendamment de

[Page 90]

toute distinction abusive fondée notamment sur le sexe, la race, l'origine nationale ou ethnique, la couleur, la religion ou l'âge.»

b) adjonction, au paragraphe 15 (1), de ce qui suit: «les déficiences physiques ou mentales,»

c) adjonction, au paragraphe 15 (1), de ce qui suit: «la situation familiale,»

d) adjonction, au paragraphe 15 (1), de ce qui suit: «l'inclination sexuelle,»

e) adjonction, au paragraphe 15 (1), de ce qui suit: «les croyances politiques,»

f) adjonction, au paragraphe 15 (1), de ce qui suit: «l'insuffisance de moyens.»

g) insertion de la conjonction «or» avant la dernière distinction discriminatoire énoncée au paragraphe 15 (1) tel que modifié.

Monsieur le président, je crois que cela doit être «ou» et non pas «or».

Mr. Chairman, again these are proposed additions and changes to Clause 15(1) and I am very pleased to note that the Conservative Party will also be proposing the addition of physical and mental disability, supporting our amendment on that particular subclause.

The Joint Chairman (Mr. Joyal): Thank you, Mr. Robinson.

I would like to invite the honourable James McGrath to move the amendment on behalf of the Conservative Party.

Mr. McGrath: Mr. Chairman, my colleague, Mr. Crombie will do so.

The Joint Chairman (Mr. Joyal): The honourable David Crombie.

Mr. Crombie: Thank you, Mr. Chairman.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Mr. Chairman, dealing with Clause 15 and our amendment to it, which is numbered CP-8(1) on the sheet, I wish to move that the proposed amendment to Clause 15 of the proposed constitution act, 1980, be amended by striking out the words "or age" in Clause 15(1) thereof and substituting therefor the following words:

age or mental or physical disability.

En français, il est proposé

Que le projet de modification de l'article 15 du projet de loi constitutionnel de 1980 soit modifié par la substitution, à «ou l'âge», au paragraphe (1), de «l'âge ou les déficiences mentales ou physiques.»

Mr. Chairman, speaking to the motion, my understanding is that the government is willing to accept our amendment.

Now, I am not sure we can continue to take this prosperity any longer!

However, on behalf of those groups, organizations and individuals who find themselves physically and mentally dis-

[Page 91]

abled in this country, I would like, on their behalf, since I am the spokesman on their behalf at this point, to offer my thanks to the government for their acceptance of the amendment.

Thank you very much.

The Joint Chairman (Mr. Joyal): Thank you, the honourable David Crombie.

Mr. Chrétien: But who told you that I have accepted the amendment. I have not yet spoken. I think it was a good put on.

Mr. Crombie: I have already spoken to Bob Kaplan and he has said it is okay!

Mr. Chrétien: If I can have five minutes I will call the Prime Minister.

It is with great pleasure that I accept the amendment on behalf of the Government.

I do not think we should debate it. There was a great deal of debate. I was very anxious that we should proceed tonight. They were preparing to have a big group tomorrow.

You can have lots of beer on my health.

Thank you for your good representation.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

The Joint Chairman (Mr. Joyal): So the amendment is carried, I should say wholeheartedly with unanimous consent.

Amendment agreed to.

Svend Robinson, p. 92

Mr. Robinson: [...] Mr. Chairman, I also cannot resist pointing out that this fundamental right to protection from discrimination on grounds of physical and mental disability is surely one which should be accorded to all Canadians right across Canada, in every province in Canada, and that no provincial government should be permitted to opt out of providing basic and fundamental rights and freedoms to the handicapped.

Mr. Chairman, perhaps my Conservative colleagues would pay particular attention to that point, that the effect of their proposed amending formula, would grant rights to the handicapped in some provinces and not to the handicapped in other provinces which chose to opt out.

-----o0o-----

January 29, 1981: Serge Joyal (Chairman), Senator Tremblay, Jake Epp, Jean Chrétien, Fred Jordan (Senior Counsel, Public Law, Department of Justice), Sven Robinson, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 48, then scroll to p. 45)

The Joint Chairman (Mr. Joyal): I would like then to invite the honourable members to take the next amendment, it is the subamendment identified CP-8(3), Clause 15(2), page 6, it is a subamendment moved by or on behalf of the Conservative Party and I would like to invite the honourable Jake Epp.

Mr. Epp: Mr. Chairman, I move that Clause 15 of the proposed amendment of the Constitution Act, 1980, be amended by striking out the word “age” in Clause 15(2) and substituting the following:

age or mental or physical disability.

[Translation]

The Joint Chairman (Mr. Joyal): Senator Tremblay.

[Text]

Senator Tremblay: Il est proposé

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Que le projet de modification de l'article 15 du projet de Loi constitutionnelle de 1980 soit modifié par substitution, dans le paragraphe 15(2), au mot «âge», de ce qui suit:

«l'âge ou les déficiences mentales ou physiques».

[Text]

Mr. Epp: Mr. Chairman, speaking to the amendment. you will recall that the same amendment. the same wording was approved in Clause 15(1). We are moving it in Clause 15(2) to conform to what has already been agreed to in Clause 15(1).

The Joint Chairman (Mr. Joyal): Thank you very much, honourable Jake Epp.

May I request the attention of the honourable Minister of Justice to reply to the proposed subamendment as introduced by honourable Jake Epp?

Mr. Chrétien: He can reply for me.

Mr. Jordan: The answer is yes, Mr. Chretien.

The Joint Chairman (Mr. Joyal): So I suggest that all honourable members vote immediately.

Mr. Epp: Before we change our minds. Subamendment agreed to.

Serge Joyal (Chairman), p. 49

The Joint Chairman (Mr. Joyal): We then come back to the whole of Clause 15 dealing with non discrimination rights.

Clause 15 as amended agreed to.

-----o0o-----

January 30, 1981, Lorne Nystrom, speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada (click [HERE](#) to view a PDF of the Special Joint Committee, Issue 49, then scroll to p. 45)

Mr. Nystrom: Thank you very much, Mr. Chairman. I want to move that Clause 29 of the proposed constitution act, 1980 be amended by striking out line 36 and 37 on page 8 and substituting the following:

tion 15, insofar as it relates to age and physical and mental disability, shall not have application until one year after this Act, except Part V, comes

Il est proposé

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Que l'article 29 du projet de Loi constitutionnelle de 1980 soit modifié par substitution, à la ligne 34, page 8, de ce qui suit:

«ticle 15, en ce qui concerne l'âge et les déficiences physiques et mentales, ne s'appliquent qu'un an après»

The reason for this, Mr. Chairman, very, very briefly, is that we feel that instead of waiting for three years before Clause 15 comes into effect after the constitution act of course becomes law, that all things that are referred to in section 16 should take effect immediately upon the proclamation of course of the resolution.

The only exception to that would be age and physical and mental disability. The reason for that, Mr. Chairman, is that these are recent additions and they may cause a little bit of concern to the provinces in terms of making sure some of the provincial law, provincial acts, are in accordance with what is in the charter of rights and we think that we should give a year for the provinces to do that.

For the other things that are mentioned in Section 15 of the resolution, they are all part of the covenant, they are all part of what is guiding the national government and they are all part of what guides the provinces of this country; so we believe that they do not need three years for those things. We believe they do not even need a year for those things, but when the new constitution takes effect that they then should be able to make sure that their own provincial laws coincide with the wishes of the Charter of rights.

Because of the recent additions of age and mental and physical disabilities clauses to the charter we feel that we should give them one year. There is no need to elaborate, Mr. Chairman, I think it is pretty well straightforward.

Svend Robinson & Jean Chrétien, p. 53

Mr. Robinson: Mr. Chairman, now that we have reconciled our differences I just have a brief question for the Minister with respect to proposed Clause 29 and it is this: could the Minister explain the reason for the delay in preventing discrimination on the basis of national or ethnic origin and religion, and in particular, could the Minister explain the reason for making the physically and mentally handicapped wait three full years before that particular legislation becomes effective, rather than the more reasonable period of, for example, one year, or at the outside two years?

Mr. Chrétien: I replied to that question earlier when you were not here. I explained the reason why we need some time,

[Page 54]

it is as simple as that and you were not here. We had a long debate on that.

-----o0o-----

SECTION 15, "EQUALITY RIGHTS", DISABILITY

February 17, 1981, Jean Chrétien, Debate in the House of Commons, p. 7375 (click [HERE](#))

Mr. Chretien: [...] Fourth, the charter enumerates equality rights. In this area, the government is taking bold steps forward in order to ensure the equality of women before and under the law. Indeed, when I announced new wording for section 15 on January 12, Mrs. Doris Anderson called it a major step forward. She said: "I think the governments come a very long way toward meeting the consensus of Canadians, including women." We agree with Mrs. Anderson that it is a major step forward. Yesterday, in this House, the hon. member for Don Valley East (Mr. Smith), assisted in his task by the hon. member for Brandon-Souris (Mr. Dinsdale), tabled a moving report on the handicapped. Today I take pride in presenting a constitutional charter which specifically prohibits discrimination against the handicapped.

-----oOo-----

February 18, 1981, Dan McKenzie, Debate in the House of Commons, p. 7411 (click [HERE](#))

DISABLED AND THE HANDICAPPED

LEGISLATION OUTLINED IN SPEECH FROM THE THRONE—MOTION UNDER S.O. 43

Mr. Dan McKenzie (Winnipeg-Assiniboine): Madam Speaker, I rise under the provisions of Standing Order 43 on a matter of urgent and pressing necessity.

Notwithstanding the government's promise of April 14, 1980, in the Speech from the Throne, to provide employment opportunities for handicapped Canadians and to add new legislative protections to the Human Rights Act, the government vacillated on entrenching the rights of handicapped persons and said the status of handicapped persons could not be defined. Therefore I move, seconded by the hon. member for Red Deer (Mr. Towers):

That this House condemns the government for failing to fulfil its promise to handicapped Canadians to introduce legislation amending the Human Rights Act to protect the rights of the handicapped in addition to any recognition granted by a charter of rights.

Madam Speaker: Is there unanimous consent for this motion?

Some hon. Members: Agreed.

Some hon. Members: No.

* * *

-----oOo-----

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

February 18, 1981, Dennis Dawson, Debate in the House of Commons, p. 7443 (click [HERE](#))

Mr. Dennis Dawson (Parliamentary Secretary to Minister of Employment and Immigration): [...] I suggest that this change is consistent with the many requests made by human rights groups and will prevent any discriminatory action not only on the part of provincial governments—for the restraining effect of the charter does not apply exclusively to provincial governments—but also to the federal government. The new Section 15 which deals with Equality Rights is an improvement over the old Section 15 which dealt with Non-discrimination Rights and which read as follows:

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. This section does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

The section as amended is much more specific, because it adds discrimination based on mental and physical disability and states that every individual is equal before the law and has the right to the equal protection and equal benefit of the law.

-----oOo-----

March 3, 1981, Ralph Ferguson, Debate in the House of Commons, p. 7835 (click [HERE](#))

Mr. Ferguson: [...] The entrenchment of this strong charter of rights and freedoms will have far-reaching effects on our society. In that Charter of Rights and Freedoms is a section which affirms aboriginal rights. I am certainly proud of that part which refers specifically to the handicapped. I am proud that these rights are included in the charter. The special needs of the handicapped must be served.

-----oOo-----

March 3, 1981, Neil Young, Debate in the House of Commons, p. 7857 (click [HERE](#))

Mr. Young: [...] I want to take a moment to talk specifically about this need as it applies to Canadians who are disabled or handicapped. Last month the Special Committee on the Disabled and the Handicapped, of which I am a member, [tabled its report in the House](#). At the beginning of my remarks I said that on rare occasions matters come before us as Members of Parliament that rise above partisan politics. In my view this debate on the constitutional package is one of these matters. Another was the work the special committee did when we undertook our investigation of the conditions of disabled and handicapped Canadians. That committee had representatives of all of the political parties in the House. I know I speak for all of them when I say that while we may have had disagreements from time to time on philosophical directions we did not at any time reduce those disagreements to partisan, political levels.

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

As a result of that attitude, I believe our committee has presented one of the best reports this House has seen in a long time, and once it is acted upon its recommendations will at long last allow this important part of our community to fully participate in the mainstream of Canadian life.

The report of the special committee was presented after we had heard from 643 witnesses who presented us with 630 submissions at 87 meetings held across Canada. The report deals with two major types of obstacles disabled Canadians face every day of their lives.

One obstacle results from the fact that many men, women and children are deprived of good health, or have disabilities which deprive them of using their feet, legs, arms, hands, voices, ears, eyes and minds in a way that other Canadians take for granted. The other kind of obstacle results from attitudes that many able bodied Canadians have toward those Canadians who are disabled. This attitude has tended to develop a disregard for the needs of disabled people when we plan our human and civil rights protections, our health care services, employment opportunities and the various facilities and systems we have to provide, such as housing, education, transportation, shopping, recreation and communications.

During our public hearings we were repeatedly told that disabled Canadians had to be provided with greater protection under our human rights legislation, and it became obvious to the committee that this had to be a top priority for government action.

We came to that conclusion for a number of reasons. First of all, under existing legislation, the only protection against discrimination disabled people have is in the area of employment. Disabled Canadians are not protected from discrimination under the minimum wage laws in many provinces or under federal legislation. Disabled people are not protected from discrimination in the fields of accommodation and transportation, nor do they have equal access to education and communication as do all other Canadians. In simple terms, some two million Canadians are being denied the opportunity of fully participating in the mainstream of Canadian life because they are disabled or handicapped.

Many members may recall that on November 3 of last year I asked the Minister of Justice (Mr. Chrétien), under the provisions of Standing Order 43, to amend the charter of rights to include the disabled, and to prohibit discrimination against the disabled and the handicapped in all areas of Canadian life.

I and my colleagues, the hon. member for Burnaby and the hon. member for Yorkton-Melville, pressed hard for such an amendment while the joint committee was considering the package now before us, and which now has those amendments included in it. Every group which appeared before that committee, and was concerned about bringing an end to the discrimination that has been practised for too long against our disabled population, argued in support of the amendment. What we are discussing here are the rights of 10 per cent of our population. We are discussing the right of over two million disabled and handicapped Canadians to enjoy life as do other Canadians. We are discussing a segment of our society that has over 60 per cent of its population out of work. We are discussing the right of thousands of children in the country to have access to an education now being denied them because of a learning disability, such as that of autistic children.

Mentally ill Canadians are discriminated against on a daily basis both by society and our judicial system. One only has to look at how the justice system treats people who are mentally disabled

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

and who have been charged with offences, We have over 1,000 Canadians who have been locked away for varying lengths of time by decision of a lieutenant governor.

One individual, Emerson Bonnar, was just recently released after serving 16 years in a maximum security institution in New Brunswick for the criminally insane because he happens to be mentally retarded. It was alleged that he had stolen a purse in 1964. Emerson Bonnar, and more than 1,000 others like him, are locked up in institutions all across this country without benefit of trial. This must stop.

We are discussing an opportunity to give all Canadians, in all parts of our society, the right to fully participate in Canadian life as equals, a right that most of us very often simply take for granted. We in the New Democratic Party have argued for those rights, and I take some pride in knowing they are now included in the charter.

As a member in this House, I am not prepared to accept the proposition advanced by some that the charter of rights should be dealt with after the Constitution has been brought home.

-----oOo-----

March 3, 1981, Senator Steuart & Senator Asselin, Debate in the Senate, p. 1922 (click [HERE](#))

Senator Steuart:—of this country, especially the native peoples and the handicapped, must be disappointed by the lack of action of the Tories. Let me tell you they must be extremely disappointed by the lack of action by some members of the NDP—and I emphasize "some".

Senator Asselin: Are you speaking on behalf of the handicapped people?

Senator Steuart: Some of the NDP in Saskatchewan have talked for years, fought for years, and given lip service for years to the rights of the minorities, the little people and the disadvantaged. When the time came to put up or shut up—to put their money where their mouths are and stand up and be counted—I am afraid they again put petty politics ahead of their principles and they backed off.

-----oOo-----

March 4, 1981, Senator Hayes, Debate in the Senate, p. 1941 (click [HERE](#))

Senator Hays: The committee listened to the criticisms of clause 1 of the Charter of Rights by Mr. Gordon Fairweather, Chief Commissioner of the Canadian Human Rights Commission; by the Canadian Civil Liberties Association; by the Canada West Foundation; by the Advisory Council on the Status of Women; by the Council for Yukon Indians; and by many other groups. And that clause was changed. The committee listened to the Canadian National Institute for the Blind, the Canadian Association for the Mentally Retarded, and the Coalition of Provincial Organizations of the Handicapped with regard to the necessity for including the handicapped in the enumeration of bases upon which there should not be discrimination.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

-----o0o-----

Senator Hayes, p. 1944

Senator Hays: [...] I have already mentioned the inclusion of the rights of the handicapped in clause 15, and I must say that I welcome this amendment which will increase the standard and the quality of life of all those who suffer mental or physical disability. In his presentation on November 25, Mr. Ron Canary, vice-chairman, Coalition of Provincial Organizations for the Handicapped, made a statement which sums up and articulates the purpose and intent of a charter:

The Canadian Charter of Rights and Freedoms will articulate the most basic and cherished values of our society and place them in the basic legislation of our land. This alone will set a new tone which of itself will do much to redress the injuries of exclusion and prejudice which have been our inheritance.

While Mr. Canary was referring directly to the problems of the handicapped, it is a statement that could well apply to all those who are affected by any clause of the charter. Approximately one week before the committee rose, four people—two in wheelchairs and two with seeing-eye dogs—came into the room and waited at the back until the proceedings were over, at approximately 11.30 p.m. At that point they came forward and presented Serge Joyal and myself with "handicapped" pins. With tears in their eyes they thanked us and the other members of the committee for all that we had done. I shall wear that button on my lapel for as long as I live.

Hon. Senators: Hear, hear.

Senator Hays: One cannot pick up a daily newspaper in Canada today without reading about somebody doing something for the handicapped. Usually it is something that has never been done before. Honourable senators are probably aware that six out of every hundred people are handicapped in some way. This ratio is equivalent to the ratio of people who attend university.

-----o0o-----

March 10, 1981, Laverne Lewycky, Debate in the House of Commons, p. 8090 ([click HERE](#))

Mr. Laverne Lewycky (Dauphin): [...] Let me turn now to Section 15, which I think is very important. It deals with the rights of the disabled. The marginal note reads "Equality before and under law and equal protection and benefit of law." The section provides that there shall not be discrimination based on mental or physical disability.

My colleague, the hon. member for Beaches (Mr. Young), worked hard on the special task force and on the committee when it dealt with this matter, I have had a lot of personal experience in working with disabled people. For three years I was a supervisor of group programs with the Society for Crippled Children and Adults in Manitoba so I know the battles that must be fought to make sure that the disabled are accorded their rights. In fact, if anything was the catalyst which led

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

me to become involved in politics, it was this. I had to run five times before getting elected, of course. As an administrator and supervisor I found that I was unable to do anything for the disabled, because when I wanted to tackle a program I came up against regulations which did not recognize equality for the disabled. It was the desire to have input and to make sure that the disabled receive due recognition that first involved me in the political scene.

When we think about the matter logically and philosophically, we realize that all of us have a certain disability. For example, I cannot swim; even though I have taken pre-beginner swimming lessons a few times I still cannot swim. There were many Monday nights at the Misericordia Hospital in Winnipeg when the disabled took swimming lessons. They now swim far better than I can. We all have disabilities in one form or another. It must be recognized that people who may be physically disabled are not necessarily mentally deficient. A lot of them are much brighter and more intelligent than I ever will be, Mr. Speaker. I am very happy to see this section in the resolution. We recognize the importance of the disabled and their rights should be entrenched in the Constitution.

-----o0o-----

March 11, 1981, David Orlikow, Debate in the House of Commons, p. 8136 (click [HERE](#))

Mr. Orlikow: [...] Very impressive representations were made to the committee by representatives of the disabled. A representative of the Coalition of Provincial Organizations for the Handicapped told the committee that:

—of most importance to disabled people in Canada is that disability or handicap should be included as grounds protected from discrimination under Section 15(1) and we recommend this amendment to you.

The charter now says:

15 (1) Every individual is equal before and under the law and has the right to equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, sex, age or mental or physical disability. In other words, the committee accepted the proposal of the representatives of the handicapped.

John Crosbie, p. 8149

Mr. Crosby: [...] There are provisions for handicapped persons. I stood in this House under Standing Order 43, and asked the government to change the constitutional provisions to provide for handicapped persons. I wonder if the government really knows what that involves. Is it prepared to finance, for the provincial governments, the programs and the educational system which handicapped persons need? Handicapped persons may have learning disabilities, for example, and they are being denied special training programs. Will the government on the other side of the House really help handicapped persons, or will it merely put a few words into a sterile constitutional provision?

-----o0o-----

SECTION 15, "EQUALITY RIGHTS", DISABILITY

March 19, 1981, Maurice Foster, Debate in the House of Commons, p. 8426 (click [HERE](#))

Mr. Foster: [...] The inclusion of equal rights for the disabled is a tribute to the work of the Constitution committee and the special committee on the handicapped which studied this problem during the past year. A society can be judged by the manner in which it treats its disadvantaged members. The inclusion of this disabled in our charter of rights is a just and bold step to right the injustices of the past toward these citizens of our country.

-----o0o-----

March 26, 1981, Senator Yuzyk, Debate in the Senate, p. 2175 (click [HERE](#))

The charter, however, does not go far enough and has many shortcomings, with respect to which parliamentarians have been receiving considerable criticism from various quarters. Here are some of the things which have been left out of it and which should be incorporated into the charter:

1. The person's right to property, although recognized by statute law up to now;
2. Recognition of God and the Judeo-Christian ethic, democracy's cornerstone, professed by a large majority of Canadians;
3. Equality of women before the law and removal of certain discriminatory aspects of this matter in some clauses;
4. Reform of the Supreme Court to prevent possible partisanship of judges and assure neutrality, independence and prestige;
5. The right to freedom from political imprisonment—the War Measures Act is made part of the Constitution, making apprehension indictable;
6. The right to life of every living human being from the time of conception to the natural end, including the handicapped and the aged;
7. Rights for the family.

-----o0o-----

March 31, 1981, Senator Yuzyk, Debate in the Senate, p. 2197 (click [HERE](#))

Jim Derkson, national co-ordinator of the Coalition of Provincial Organization for the Handicapped, congratulated the government after the acceptance of the inclusion of "physical and mental disability" in the equality rights clause, clause 15.

-----o0o-----

SECTION 15, “EQUALITY RIGHTS”, DISABILITY

April 21, 1981, Ron Irwin, Debate in the House of Commons, p. 9353 (click [HERE](#))

Mr. Irwin: [...] I would now like to deal with the pleas which were made on behalf of the handicapped. In our original draft of the resolution rights of the handicapped were not included. Mr. Gordon Fairweather of the Canadian Human Rights Commission, who came before the joint committee, said this:

The list of grounds presented in that section is incomplete. In particular, no promise of equality under the law is made to the disabled.

Mr. Clarke Macdonald of the United Church of Canada said that the rights of the physically and mentally disabled should also be stated. Mr. David Vickers of the Canadian Association for the Mentally Retarded said:

Our plea to you is not a plea for special rights. Our plea as advocates of people with a handicap is that they too will be afforded the full opportunity that attaches to their Canadian citizenship; in short, a plea that they will not be forgotten in the new bill of rights so that they may become Canadians first and handicapped second.

There was one young man who had a very profound effect on myself. That man was Ron Kanary of the Coalition of Provincial Organizations for the Handicapped. He came in a wheelchair to my office. He spoke quietly. He had appeared before the special parliamentary committee on the disabled and the handicapped and he also appeared before the joint committee.

He said:

We are looking for the Constitution to set a tone so that changes may come about, not overnight but over a period of years, that we can become fully integrated and active and contributing as a force of people in society.

He asked no special favours and we gave him none. All we put into the Constitution is the right that the handicapped will not be discriminated against by legislation. When the official opposition votes against this charter of rights, let them make no bones about it; they will be voting against the hard fought rights of the disabled, like Ron Kanary, and his organization. I say to the opposition. the only source of shame among all of us is that we did not do this years ago.

-----oOo-----

April 23, 1981, Senator Bélisle, Debate in the Senate, p. 2355 (click [HERE](#))

Senator Bélisle: The right to life, which should be listed as a fundamental right, is considered merely a legal right, and the wording of that section deliberately ignores the unborn, the handicapped and the aged, whose lives are continually being taken and further threatened by liberal legislation.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Section 7 of the charter should proclaim that every individual has the right to life because this right is inherent and is the most fundamental right a human being has. A paragraph specifically protecting the right to life of the unborn should be added to section 15. It should read:

In this charter, the term "every individual" means every living human being from the time of conception onward until its natural end, regardless of any physical or mental condition, distinction, or circumstance.

Modern scientific authorities agree that human life begins at conception. Such clearly established facts should, therefore, be recognized in a Charter of Rights.

[Translation]

This goes to say that there is no basic step more important at the constitutional level than the drawing up of a Charter of Human Rights and Freedoms. And it is exactly for that reason that we should not undertake such a basic task so long as we are not constitutionally independent and we do not have an absolute control over our constitution.

-----o0o-----

November 20, 1981, Jean Chrétien, Debate in the House of Commons, p. 13044 (click [HERE](#))

Mr. Chretien: [...] In addition, the charter specifically prohibits discrimination against those with physical or mental disabilities. This is a great achievement which makes Canada a world leader in the International Year of the Disabled. Much credit should be given to the hon. member for Don Valley East (Mr. Smith) and to other members of the Special Committee on the Disabled and the Handicapped.

-----o0o-----

November 24, 1981, Monique Bégin, Debate in the House of Commons, p. 13214 (click [HERE](#))

Miss Bégin: [...] A handicapped person will never again be denied employment simply because he or she is in a wheelchair, walks with difficulty or does not communicate the way most people do. That reminds me of someone who came to see my colleague, the hon. member for Hochelaga-Maisonneuve (Mr. Joyal), someone who was slightly mentally retarded and who wanted a daycare job with a school board. She has just been told: Don't try to get a job, go on welfare instead. That is the kind of situation which will no longer be tolerated because that is outright discrimination.

-----o0o-----

November 26, 1981, Senator Macquarrie, Debate in the Senate, p. 3067 (click [HERE](#))

SECTION 15, "EQUALITY RIGHTS", DISABILITY

Hon. Heath Macquarrie: [...] It would strike me that, whatever is wrong or right about the recent revised constitutional discussions, one of the invidious errors that has been made is that too many things have been done too quickly. People have been saying, "Oh, I didn't know that. I didn't quite understand that." There have been new pressure groups arising, and there has been no response to these pressure groups. I read in the morning press that there are other people who would like to be heard, one group being the handicapped, and I also read the name of our distinguished former colleague, Senator Forsey.

-----o0o-----

November 27, 1981, Howard Crosby, Debate in the House of Commons, p. 13431 (click [HERE](#))

Mr. Crosby: [...] I would like to review some of the provisions of the charter which I think are of real importance and could bring about just results in situations where in the past injustice has occurred. I have particularly in mind the provisions relating to handicapped persons. Anyone who has followed the plight of handicapped persons in Canada will know that in many practical and theoretical ways they have been deprived of their rights. Our charter now contains a provision which will guarantee handicapped persons equality with all citizens of Canada. I wonder if the people of Canada and indeed even members of this House, realize and recognize what that means. It means in one way the simple provision of access to buildings so that a person in a wheelchair can go into the same places as a person who has the full use of his or her legs. That physical access can be easily provided.

But what about the other problems facing the handicapped? Will our schools across Canada be willing to admit children with handicaps? It will be very difficult to bring handicapped children into the classroom in which other children, are taught-those who might be said to be normal children. If handicapped children cannot be brought in and integrated into the educational system and have exactly the same privileges and treatment as children without handicaps, this provision will be meaningless.

I can say from past personal experience that the implementation of those provisions will cost thousands and thousands of dollars, perhaps millions and millions, in the provinces of Canada. I hope that when we rise to vote on this constitutional resolution and endorse the rights which we are now giving handicapped persons, we will do so in the full realization that in order effectively to implement those rights millions of dollars of public funds will have to be expended.

-----o0o-----

November 30, 1981, David Smith & Walter Baker, Debate in the House of Commons, p. 13514 (click [HERE](#))

Mr. Smith: [...] The final recollection to which I might refer relates to the fact that the disabled are included in Section 15. When the first draft came out, they were not included. I remember my first reaction to that. I do not think the fact that they were excluded was indicative of anyone being mean spirited or

SECTION 15, "EQUALITY RIGHTS", DISABILITY

[Page 13515]

indifferent. People were simply not aware of the need for their inclusion.

Mr. Baker (Nepean-Carleton): I think you are right. Mr. Smith: I remember speaking on it in caucus time after time, to the point where I almost felt that I was becoming a pest. One would see the odd person rolling his eyes back as if to say, "Here goes Smith again on the disabled". However, I remember the feeling I had when the Minister of Justice stood up in caucus and announced that the disabled would be included. If I never do anything in public life again, that will have been worth it.

Mr. Baker (Nepean-Carleton): I agree.

-----o0o-----

December 3, 1981, Senator Croll, Debate in the Senate, p. 3165 (click [HERE](#))

The Charter of Rights is now subject to provincial override. Provincial legislatures may pass laws overriding the rights, amongst others, of the physically and mentally handicapped. You would have thought that there would have been some sympathetic "give" there. What a poor excuse to claim that they could not afford to provide access to public transportation for handicapped persons. It was a mere excuse and a low blow. Provinces may also pass legislation which overrides the Charter of Rights and Freedoms. The hope is that the overriding legislation must be renewed every five years.

Senator Manning, p. 3170

The fundamental right to own property and not be deprived thereof without due process and just compensation is not in the Charter at all. The provisions to protect women's rights are still being criticized as incomplete and unacceptable. Widespread dissatisfaction still prevails regarding aboriginal rights. Civil rights groups are charging that the Charter is still woefully defective in many respects. Law enforcement organizations are condemning it because it will make the enforcement of criminal law even more difficult than it is now. Pro-life groups are condemning it because it doesn't protect the yet unborn. Spokesmen for the physically handicapped and disabled say it is unacceptable. Even the Prime Minister is now dissatisfied because it is no longer the Charter he wanted. Such is the finished product we are now asked to approve.

-----o0o-----

December 7, 1981, Senator Phillips, Debate in the Senate, p. 3280 (click [HERE](#))

Senator Phillips: [...] The omission of women's rights in the original resolution introduced in the House of Commons has left many Canadians dissatisfied. Admittedly, the House of Commons attempted to correct those omissions, but I do not believe the error has been fully corrected, and it has certainly not been accepted by the general public. Many women's groups, native groups and the handicapped still express their opposition.

SECTION 15, "EQUALITY RIGHTS", DISABILITY

I doubt that I can add very much to what has already been said, but I should like to leave honourable senators with a few figures regarding those who are dissatisfied with the Charter of Rights. Women represent 52 per cent of Canada's population; natives, 6.3 per cent; and the handicapped, 11.6 per cent. If we add the 25 per cent or more that represent the population of Quebec, I ask the question: How many people are satisfied with the present Charter of Rights?

Senator Austin, p. 3317

Senator Austin: The physically handicapped have recently bound themselves together as an interest group in recognizing their minority status within the general community. They are gradually becoming able to influence political systems on behalf of their needs. I was particularly proud of the all-party group headed by David Smith, M.P., which prepared the [report](#) that became generally available at the end of last year and played a significant role in providing for the special concerns of the physically handicapped in our Constitution.

Section 15 also identifies people with mental disabilities as a minority group to be protected, and those people have special handicaps. I spent one year as Treasurer for the World Federation for Mental Health and learned something of that matter. The mentally ill, above other minorities, have a far greater handicap in speaking for themselves and in caring for themselves. There is a special need for assistance to care for them and to do things on their behalf.

-----o0o-----

December 8, 1981, Senator Neiman, Debate in the Senate, p. 3363 (click [HERE](#))

As we all know, the classes to which equality rights apply have been expanded to include those persons who suffer from mental or physical disabilities. Hopefully the quality of protection under that section has also been strengthened.

-----o0o-----