

FEDERAL-PROVINCIAL CONFERENCE
OF
FIRST MINISTERS

Report of the Continuing Committee of Ministers
on the Constitution to First Ministers

CHARTER OF RIGHTS

Ottawa
February 5-6, 1979

CHARTER OF RIGHTS

Summary

Ministers discussed the question of an entrenched Charter of Rights in a renewed Constitution.

Federal Ministers favoured an entrenched Charter along the lines proposed in Bill C-60. Most Provincial Ministers believed that basic rights and freedoms were more adequately protected through the normal legislative process and common law traditions than by formal entrenchment in the Constitution.

While this basic philosophical difference of viewpoint persisted, some progress was made in identifying possible means by which some if not all provinces could consider adhering to an entrenched Charter which included fundamental freedoms, democratic rights and language rights.

CHARTER OF RIGHTS

Introduction

Ministers meeting at Vancouver had before them the Report of the Committee of Officials which was prepared at the Ottawa meeting on January 11-12, 1979. They also had a comparative table of the rights and freedoms as set forth in Bill C-60 and those contained in a revised draft Charter circulated by federal officials as a basis for discussion at the Ottawa meeting.

Discussions

Ministers addressed the basic policy difference which existed between the federal government and the governments of most provinces on the wisdom of or need for having an entrenched Charter of Rights. It was the view of many provincial Ministers that there should be no entrenched Charter, particularly one as comprehensive as that proposed by the federal government. In their opinion, rights and freedoms are best protected by human rights laws enacted by each jurisdiction where flexibility in defining and clarifying rights can be maintained. Federal Ministers were of the view that entrenchment of all categories of rights and freedoms was essential for the protection of Canadians and an objective that was strongly supported by the public.

A number of provincial Ministers were prepared to consider the possibility of entrenching three major categories of rights (fundamental freedoms, democratic rights and language rights), although with some serious reservations on the nature and extent of the language rights, if the federal government would consider limiting a Charter to these categories by dropping the other categories (non-discrimination, legal, mobility and property rights). These rights, it was proposed, would be left to be dealt with by ordinary legislation at each level of government, despite the recommendations of the Pepin-Robarts Report that they be in an entrenched Declaration of Rights. New Brunswick, however, felt that all categories of rights should be entrenched, and Ontario was prepared to see some legal and mobility rights included if properly worded.

Federal Ministers took the position that the federal government would want all categories of rights included in a Charter and entrenched at least for the federal level. Their preferred position was that the categories additional to fundamental freedoms, democratic rights and language rights (which would be applicable to both levels of governments), would also be available for the provinces to opt into totally or by category and with or without an override clause. This could be done as and when each province decided, as long as there was initial adherence to the fundamental freedoms, democratic rights and language rights.

It was then proposed by a number of provincial Ministers that the Charter be broken into two phases. The first phase would deal with entrenchment of fundamental freedoms, democratic rights and language rights. The second

phase would then address the remaining categories of rights in the on-going process of constitutional review. Federal Ministers indicated that they were doubtful of the viability of this approach, but would take the matter under advisement with their federal colleagues. Some provincial Ministers also expressed reservations on this approach.

Attachments:

- (1) Comparative Summary of Bill C-60
Provisions and New Proposals
- (2) Ontario Proposed Constitutional Text,
January 24, 1979



Comparative Summary of Bill C-60
Provisions and New Proposals

BILL C-60 PROVISIONS

NEW DRAFT PROPOSALS

A. Fundamental Freedoms

1. Freedom of thought, conscience and religion.
2. Freedom of opinion and expression.
3. Freedom of peaceful assembly and of association.
4. Freedom of press and other media.

Limitation Clause

Those reasonably justifiable in a free and democratic society in interests of

- public safety or health
- peace and security of public
- rights and freedoms of others.

Override Clause

None

A. Fundamental Freedoms

1. Freedom of conscience and religion.
2. Freedom of thought, opinion and expression, including freedom of press and other media.
3. Freedom of peaceful assembly and of association.

Limitation Clause

Those prescribed by law as are reasonably justifiable in a free and democratic society in the interests of

- national security
- public safety, order, health or morals
- any rights and freedoms of others.

Override Clause

None

B. Democratic Rights

1. Principles of universal suffrage and free and democratic elections.
2. Right of citizen to vote and to qualify for election in House of Commons or legislature without discrimination based on race, national or ethnic origin, language, color, religion or sex.
3. Limits on maximum duration of House of Commons and legislatures except in case of national emergency. Requirement for annual sessions of Parliament and legislatures.

Limitation Clause

On first two only: same as under fundamental freedoms.

Override Clause

None

B. Democratic Rights

1. Consistent with principles of universal suffrage and free and democratic elections, right of citizen to vote and qualify for election in House of Commons or legislature without unreasonable distinction or limitation.
2. Limit on maximum duration of House of Commons and legislatures except in case of national emergency.
3. Requirement for annual sittings of Parliament and legislatures.

Limitation Clause

None, except as built into first two.

Override Clause

None

C. Legal Rights

1. Right against unreasonable searches and seizures.
2. Right against arbitrary detention, imprisonment or exile.
3. Rights on arrest or detention to be told promptly of reasons therefor, to retain and instruct counsel promptly and to remedy by habeas corpus.

C. Legal Rights

Right to life, liberty and security of person and right not to be deprived thereof except by due process of law, including

1. Right against unreasonable searches and seizures.
2. Right against unreasonable interference with privacy.

C. Legal Rights (Cont'd)

- 4. Right not to testify in any proceedings if denied counsel, protection against self-crimination or other constitutional safeguards.
- 5. Right to assistance of interpreter in any proceedings.
- 6. Right to fair hearing when rights of obligations being determined.
- 7. Right of accused to presumption of innocence.
- 8. Right of accused to fair and public hearing before impartial tribunal.
- 9. Right of accused not to be denied bail unfairly.
- 10. Protection against ex post facto offences and punishment.
- 11. Protection against cruel and unusual punishment or treatment.

C. Legal Rights (Cont'd)

- 3. Right against detention or imprisonment except in accordance with prescribed laws and procedures.
- 4. Rights on arrest or detention to be told promptly of reasons therefor, to retain and consult counsel promptly and to remedy by habeas corpus.
- 5. Rights as a person charged with a criminal or penal offence
 - to be informed of specific charge,
 - to be tried in reasonable time,
 - to presumption of innocence,
 - to a fair and public hearing before impartial tribunal,
 - not to be denied bail unfairly,
 - to protection against ex post facto offences and punishment.
- 6. Protection against double jeopardy.
- 7. Benefit of a lesser penalty where law is changed.
- 8. Protection against cruel or inhuman treatment or punishment.
- 9. Right when compelled to give evidence to counsel, to protection against self-crimination and to other constitutional safeguards.
- 10. Right to assistance of interpreter in any proceedings.
- 11. Right to fair hearing when rights and obligations being determined.

Limitation Clause

Same as under fundamental freedoms.

Limitation Clause

Legal rights, except for right to life, right to counsel, protection against ex post facto laws, protection against self-crimination, protection against cruel or inhuman punishment or treatment and right to interpreter, may be overridden in times of serious public emergency. Limits on public proceedings may be placed in normal circumstances.

Override Clause

None

Override Clause

Provinces could opt in with general override power.

D. Non-Discrimination Rights

- 1. Right to equality before the law and to equal protection of the law.
- 2. Enjoyment of fundamental freedoms, legal rights and mobility rights without discrimination based on race, national or ethnic origin, language, color, religion, age or sex.

D. Non-Discrimination Rights

- 1. Right to equality before the law and to equal protection of the law without distinction or limitation other than one which is provided by law and fair and reasonable having regard to object of law.
- 2. Exemption of laws which are in furtherance of affirmative action programs even though they may discriminate, as long as discrimination is justifiable.

Q. Non-Discrimination Rights (Cont'd)

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

D. Non-Discrimination Rights (Cont'd)

Limitation Clause

None, except as built in to section.

Override Clause

Provinces could opt in with general override power.

E. Mobility Rights

1. Right of person not to be arbitrarily exiled from Canada.
2. Right of citizens to take up residence, acquire and hold property and pursue a livelihood, subject to laws of general application, but without discrimination based on province of residence or previous residence.

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

E. Mobility Rights

1. Right of citizen to enter, remain in and leave Canada.
2. Right of citizen or "landed immigrant" to change province of residence or to pursue livelihood in another province, subject to laws of general application, but without discrimination based only on province of present or previous residence.

Limitation Clause

Those prescribed by law as are reasonably justifiable in a free and democratic society in the interests of

- national security
- public safety, order, health or morals
- overriding economic or social considerations.

Override Clause

None

Property Rights

1. Right to use and enjoyment of property by individual, and right not to be deprived thereof except in accordance with law.
2. Right to acquire and hold property without discrimination based upon province of residence.

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

F. Property Rights

1. Right to use and enjoyment of property by individuals or groups and right not to be deprived thereof except in accordance with law that is fair and just.

Limitation Clause

1. Laws which control or restrict use of property in public interest or for collection of taxes and penalties.
2. Laws which are justifiable in a free and democratic society in the interests of
 - national security
 - public safety, order, health or morals.

Override Clause

None

Language Rights

1. Power of Parliament and legislatures to declare English and French official languages of Canada for all purposes declared.
2. Power of Parliament and legislatures to provide for more extensive rights to use English and French.
3. Right to use English or French in all debates and other proceedings of Parliament or any legislature.
4. Statutes, records and journals of Parliament and legislatures of Ontario, Quebec and New Brunswick to be printed and published in English and French, both versions equally authoritative. In other provinces, obligation optional with legislatures. In Ontario, date for French publication to be fixed by legislature.
5. Right to use French or English in all court proceedings at federal level and in Ontario, Quebec and New Brunswick.

6. Right of witness to be heard in French or English (without prejudice) in any court in Canada in any criminal proceeding or in any serious provincial penal proceeding.

7. Right of a member of public to communicate in English or French with head or central office of any federal government institution, and with any principal offices thereof in areas designated by Parliament on basis of minority language numbers.

8. Right of member of public to communicate in English or French with principal offices of any provincial government institution in areas designated by provincial legislature on basis of minority language numbers.

9. Preservation of legal or customary rights or privileges re use of languages other than English or French.

G. Language Rights

1. English and French declared official languages of Canada with status and protection set forth in Charter.
2. Power of Parliament and legislatures to extend the status, protection or use of English and French.
3. Right to use English or French in debates and other proceedings of Parliament; same right in debates of legislatures.
4. Statutes, records and journals of Parliament and legislatures of Ontario, Quebec and New Brunswick to be printed and published in English and French, both versions equally authoritative. In other provinces, obligation optional with legislatures with test of "to extent practicable." In Ontario, date for French publication to be fixed by legislature.
5. Right to use French or English in all court proceedings at federal level and in Ontario, Quebec and New Brunswick. But with respect to three provinces, right to be provided as soon as practicable and in any event not later than five years after adoption of Charter. For other provinces, a similar right to greatest extent possible as the legislatures may prescribe.
6. Right of witness to be heard in French or English, through an interpreter where necessary (without prejudice), in any court in Canada in a case involving an offence under federal law or a serious offence under provincial penal law.
7. Right of a member of public to communicate in English or French with head or central office of a federal government institution, and with any principal offices thereof in areas designated by Parliament on basis of minority language numbers.
8. Right of member of public to communicate in English or French with the head, central or principal offices of any provincial government institution, to the extent and in the areas as defined by the provincial legislature on the basis of practicability and necessity for such services.
9. Preservation of legal or customary rights or privileges re use of languages other than English or French.

F. Language Rights (Cont'd)

- 1. Right of minority language (English or French) parents who are Canadian citizens to choose minority language education for their children in areas of province where it is reasonably determined by provincial legislature that numbers of children in any area warrant the provision of necessary facilities out of public funds.
- 2. Preservation of rights in the future of identifiable English or French language communities to use of French or English.
- 3. Preservation of existing constitutional rights, privileges or obligations respecting the French and English languages.
- 4. Repeal of section 133 of BNA Act and section 23 of Manitoba Act upon entrenchment of Charter.

Limitation Clause

Same as under fundamental freedoms.

Override Clause

None

G. Language Rights (Cont'd)

- 10. Right of minority language (English or French) parents who are Canadian citizens to choose minority language education for their children in areas of province where it is reasonably determined by provincial legislature that numbers of children in any area warrant the provision of necessary facilities out of public funds.
- 11. Preservation of rights in the future of identifiable English or French language communities to use of French or English.
- 12. Preservation of existing constitutional rights, privileges or obligations respecting the French and English languages.
- 13. Repeal of section 133 of BNA Act and section 23 of Manitoba Act upon entrenchment of Charter.

Limitation Clause

None

Override Clause

None

I. Undeclared Rights

- 1. Protection of any undeclared rights existing at time of adoption of Charter, including those of native peoples under Royal Proclamation of 1763.

H. Undeclared Rights

- 1. Protection of any undeclared rights existing at any time, including those that may pertain to native peoples.

1 ENFORCEMENT PROVISIONS

- 1. Charter provisions to render inoperative any law which is in conflict with its provisions.
- 2. Where no other remedy exists, courts empowered to grant declaratory, injunctive or similar relief where anyone seeks to have Charter rights defined or enforced.

I ENFORCEMENT PROVISIONS

- 1. Charter provisions to render inoperative any law or administrative act which is in conflict with its provisions.
- 2. Where no other effective recourse or remedy exists, courts empowered to grant such relief or remedy for a violation of Charter rights as may be deemed appropriate and just in the circumstances.