



Department
of Justice

Ministère
de la Justice

MEMORANDUM/NOTE DE SERVICE

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Date

November 28, 1980

TO/A: MISS E.I. MACDONALD
SENIOR COUNSEL (PUBLIC LAW)

FROM/DE: SENIOR COUNSEL
(PUBLIC LAW)

SUBJECT/OBJET: SECTION 15 OF CHARTER OF RIGHTS

Comments/Remarques

A question has been raised whether protection against discrimination on grounds of "national origin" in Section 15 could be construed by the courts as being violated by laws which discriminate as between foreign and Canadian-owned corporations as, for example, laws that provide financial incentives to Canadian-owned companies.

It is unlikely that "national origin" would be the basis of the discrimination in these circumstances; rather it would be the nationality of the corporation or the citizenship of the shareholders that would underlie the discrimination, and neither of these are specified grounds of discrimination.

Nevertheless, since the matter is not entirely free of doubt, the Deputy Minister feels that we should clarify the point. This can be done by substituting for "everyone" and "person" in section 15 the term "individual", so that the proposed new section would read:

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

(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 or sex."

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dermines the very purpose of the to sit down and negotiate agreements between themselves.

An examination of the other sections where the term "everyone" is used indicates that we would want these provisions to apply to corporations as well as to individuals. However, I think it is quite evident that "non-discrimination rights" (or "equality rights") is one category that is intended to apply only to individuals. Consequently, the change as suggested can be properly justified.

F.J.E. Jordan

cc. Deputy Minister
Barry Strayer
Gérard Bertrand
Mary Dawson

Department
of Justice

Ministère
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Date 24.11.90

Subject/Sujet... 5: 21...

Citizen
Devoir
Le Droit
Edmonton Journal
Financial Post
Financial Times
The Gazette
Globe & Mail

The Journal (Ottawa)
London Free Press
MacLean's
News of the North
La Presse
The Province
Le Soleil
Sunday Post

The Telegraph Journal
Toronto Star
Toronto Sun
Vancouver Sun
Windsor Star
Winnipeg Free Press

Rights charter may hamper energy plan, lawyers told

By ROBERT SHEPPARD

The Liberal Government's cherished goal of increasing Canadian ownership in the domestic oil and gas industry could be impeded by its proposed charter of rights, according to a leading constitutional lawyer.

Peter Hogg, a professor at Osgoode Hall Law School, told a seminar sponsored by the University of Toronto this weekend that the proposed charter of rights and freedoms prohibits discrimination on the basis of national origin.

That clause, he said, could induce a number of foreign-owned oil companies to challenge Ottawa's energy program in the courts because it sets out different financial incentives based on the degree of Canadian ownership.

A senior federal justice official observing the weekend conference said he had never envisioned that the clause could be used in that fashion. But Prof. Hogg allowed in an interview that the courts "might offset" that type of positive discrimination on the basis of section one of the charter.

That controversial section, which limits the ability of the courts to interpret the rest of the charter subject to "reasonable limits as are generally accepted in . . . a democratic society with a parliamentary system of government," has been criticized by every influential group and legal expert appearing before the special parliamentary committee on the constitution this week.

The criticism that section one undermines the very purpose of the

charter spilled over to the law seminar this weekend where participants labelled it "a nasty cop-out" and part of "a rather elaborate fraud."

Federal drafters say they did not anticipate the strong antipathy that section one has provoked. They argue it wasn't their first choice but a compromise position designed to try and alleviate the provinces' concerns that an entrenched charter would give too much power to the courts to redraft legislation.

The strongest critic on the weekend was Osgoode Hall law Professor Harry Arthurs, a former president of the Canadian Civil Liberties Association, who said the present proposal gives "a dangerous illusion" that rights are being protected, "brought to us by the same folks who brought in the War Measures Act in 1970, and the uranium legislation (prohibiting discussion of the federal Government's role in an international uranium cartel) a few years later."

McGill University law Professor Irwin Cotler told the U of T seminar that a charter of rights "should be a bold, unequivocal, almost heroic statement." Sadly, he concluded, the proposed charter does not reach these heights.

M. J. Trebilcock, a U of T professor of law, argued that the controversial mobility rights to be guaranteed in the proposed charter could lead to a morass of litigation and problems.

A better solution, he said, would be for the charter to force the provinces to sit down and negotiate agreements between themselves.

(1) Benjamin
 my school
 first night
 Fred Jordan
 I would like to
 have a word
 with you about
 this before
 noon to-morrow
 25.
 Nov 25/