

C O N F I D E N T I A L

MEMORANDUM

TO: NDP CAUCUS

FROM: SVEND ROBINSON

SUBJECT: PROPOSED NDP AMENDMENTS TO CONSTITUTIONAL CHARTER OF RIGHTS

Amendments recently tabled by the Minister of Justice meet a number of important criticisms levied against the original Charter, bringing it largely back to the status of the July, 1980 federal document. There are still a number of changes which must be made to the Charter as presently proposed. I would recommend the following amendments:

1. Section 1 - this section should be re-worded to simply guarantee the rights and freedoms set out in the Charter in the first clause. The following words should be added at the end "and the equal right of males and females to the enjoyment of these rights and freedoms." There would in addition, be new limitations clause (Section 30) to indicate clearly that the rights set out in Sections 2B to E as well as 6 can be subject to "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". The rights set out in Sections 7, 10C and 11E shall be subject to the test that "in time of public emergency, which threatens the life of the nation or a part thereof and the existence of which is officially proclaimed by the federal government and confirmed by the House of Commons at the earliest possible time, not more than one-third of the members present and voting opposed, the rights set out (in those sections) may be derogated from to the extent strictly required by the exigencies of the situation providing that any measures taken pursuant to this Section may not involve distinction on the grounds outlined in Section 15 (1).
2. Section 2 - the word "everyone" should be changed to the words "every person" in this Section and also Sections 7, 8, 9, 10, 11, 12 and 17 in addition, the "freedom of the press and other media of communication" should be in a separate sub-section. Also the word "peaceful" in "peaceful assembly" should be removed in keeping with the Canadian Bill of Rights.
3. Section 3 - change to "consistent with the principles of free and democratic elections to the House of Commons and to the Legislative Assemblies and of universal suffrage for that purpose, every citizen of Canada shall have the right to vote in an election of Members of the House of Commons, of a Legislative Assembly, ~~or of a municipal council,~~ to be a candidate therefor, and to qualify for membership therein, without demonstrably justifiable distinction or limitation, and in any case without distinction on the grounds set out in Section 15 (1) except "age".
4. Section 4 - this Section should be changed by amending the word "apprehended" to "imminent" and to include a provision requiring a Parliamentary debate on continuation of the state of emergency and requiring a vote with not more than one-third of those present and voting opposed at six-month intervals following the imposition of the state of emergency.

Handwritten note: *Handwritten note: Part in drafting language*

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5. Section 6 - add Subsection 4 "Canadian citizenship once legally acquired, shall be inalienable."
6. Section 7 - add following the words "fundamental justice" the words "including the principles of due process of law" add new Subsection B on the right to a fair hearing "every person is entitled to a fair hearing in accordance with the principles of fundamental justice for the determination of his or her rights and obligations." and add new Subsection C "every person has the right to protection against arbitrary or unreasonable interference with privacy".
7. Section 8 - change to "every person has the right not to be subjected to unreasonable search or seizure of his or her ^{individual} property."
8. Section 10 - include the following rights: person or
 1. the right of those persons without sufficient means to pay for counsel, to be provided with it where the interests of justice so require and
 2. the right to protection from self-incrimination from the moment of arrest and the right to be informed of that right.
9. Section 11 (C) - add the words "or confess guilt"
 Section 11 (F) - change to "two years" from "five years"
 Section 11 (G) - add the words "or was criminal according to general principles of law recognized by the community nations"
 Section 11 (H) - change "offence" to "the acts giving rise to an offence" (may require other re-drafting)
 Section 11 (I) - change to "varied after the time of commission"; add new sections (J) and (K) as follows:
 - (J) - to be confronted with the witnesses against him or her
 - (K) - to have compulsory process for obtaining witnesses in his or her favour
10. Section 12 - change words "cruel and unusual" to "cruel, inhuman, or degrading"
11. Section 14 - change to "every person has the right to assistance of an interpreter in any proceedings before a court, tribunal, commission, board or other authority in which the person is involved or is a party or witness if he or she does not understand or speak the language in which the proceedings are conducted or is subject to a hearing impairment."
12. Section 15 - this section should be re-drafted as follows:

Sub-paragraph (A) every person is equal in, before and under the law and has the right to the 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.

Sub-paragraph (B) sex, race, colour, religion and national or ethnic origin shall never constitute a reasonable distinction, for the purposes of subsection (A)

Sub-paragraph (C) "Subsection A does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged groups including those that are disadvantaged because of the grounds specified therein."

Word
property

ff

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- 13. Section 24 - add "including the exclusion of evidence and the awarding of compensation"
- 14. Section 25 - this section must be re-drafted to ensure that the aboriginal treaty or other rights or freedoms pertaining to aboriginal peoples are only those which apply equally to men and women. If not, Lovelace may well be preserved.
- 15. Section 29(2) - there is no need to suggest a three-year delay here (an argument will be made particularly with respect to handicap and age however)
- 16. Section 52 - add the words "enacted before or after the coming into force of this Charter" to avoid any possibility of the "frozen concepts doctrine" being applied by the Supreme Court.
- 17. There should be provision that Section 42 (on amendment by referendum) can under no circumstances apply to amendments pertaining to the Charter of Rights.

PROPOSED ADDITIONS

- 1. Section 2(D) ^(E) - add the words "including the freedom to organize and bargain collectively" *freedom of association*
- 2. Add a new Section 5 and renumber Section 5 as Section 4(3): "every person has the right to have reasonable access to information in the possession ^{under the control} of federal, provincial and municipal departments [and agencies]." *institution*
- 3. Add new Section 31 (3) "The governments of Canada and the provinces and the Territories commit themselves to full implementation of the United Nations International Covenant on Social and Cultural Rights and to the goal of a clean and healthy environment and safe and healthy working conditions."

"or dependent" - CP - OK

"(g)" - CP - OK

"deaf" - "hearing impaired"

agree with the C.P. re examination of Bills

PROPOSED NDP AMENDMENTS TO CONSTITUTIONAL CHARTER OF RIGHTS, SECTIONS 1-15

1. Section 1

This section should be re-worded to simply guarantee the rights and freedoms set out in the Charter in the first clause. The following words should be added at the end "and the equal right of males and females to the enjoyment of these rights and freedoms."

There would in addition, be a new limitations clause (Section 30) to indicate clearly that the rights set out in Sections 2 and 6 can be subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". The rights set out in Sections 7, 10(c) and 11(e) shall be subject to the test that,

"In time of public emergency, which threatens the life of the nation or any part thereof, the existence of which is officially proclaimed by the federal government and confirmed by the House of Commons at the earliest possible time with not more than one-third of the members present and voting opposed, the rights set out in in those sections may be derogated from to the extent strictly required by the exigencies of the situation, providing that any measures taken pursuant to this Section may not involve distinction on the grounds outlined in Section 15(1)."

2. Section 2

The word "everyone" should be changed to the words "every person" in this Section and also in Sections 7, 9, 10, 11, 12 and 17.

In addition, the "freedom of the press and other media of communication" should be in a separate sub-section.

Also the word "peaceful" in "peaceful assembly" should be removed in keeping with the Canadian Bill of Rights.

3. Section 3

Change to:

"Consistent with the principles of free and democratic elections to the House of Commons and to the Legislative Assemblies and of universal suffrage for that purpose, every citizen of Canada has the right to vote in an election of Members of the House of Commons or of a Legislative Assembly, to be a candidate for election thereto, and to qualify for membership therein, without demonstrably justifiable distinction or limitation and in any case without distinction on the grounds set out in sub-section 15(1) except "age".

4. Section 4

This section should be changed by amending the word "apprehended" to "imminent", and to include a provision requiring a Parliamentary debate on continuation of the state of emergency and requiring a vote with not more than one-third of those present and voting opposed at six-month intervals following the imposition of the state of emergency.

5. New Section 5

Add a new Section 5 and re-number Section 5 as Section 4(4):

"Every person has the right to have reasonable access to information in the possession of federal, provincial and municipal departments, institutions, and agencies."

control

PROPOSED NDP AMENDMENTS CONT...6. Section 6

Add new Sub-section 3(c)

"any laws or practices reasonably justifiable to mitigate adverse environmental and social impacts on a community, culture, economy or society of the Aboriginal peoples of Canada."

NO — Also add Subsection 6(4) "Canadian citizenship once legally acquired, shall be inalienable."

7. Section 7

NO — Add following the words "fundamental justice" the words "including the principles of due process of law."

Add new Subsection (2) on the right to a fair hearing "Every person is entitled to a fair hearing in accordance with the principles of fundamental justice for the determination of rights and obligations."

NO — Add new Subsection (3) "Every person has the right to protection against arbitrary or unreasonable interference with privacy".

8. Section 8

NO — Change to "Every individual has the right not to be subjected to unreasonable search or seizure of person or property."

9. Section 9

Add the words "or deported".

10. Section 10

Include the following rights:

1. The right of those persons without sufficient means to pay for counsel, to be provided with it where the interests of justice so require, and
2. The right to protection from self-incrimination from the moment of arrest, and the right to be informed of that right.

11. Section 11

Add the following changes:

NO — Section 11 (c) add the words "or to confess guilt"

NO — Section 11 (f) change to "two years" from "five years"

Section 11 (g) add the words "or was criminal according to general principles of law recognized by the community, nations"

NO — Section 11 (h) change "offence" to "the acts giving rise to an offence" (may require other re-drafting)

NO — Section 11 (i) change to "varied after the time of commission"

Add new Subsections (j) and (k) as follows:

NO — Section 11 (j) to be confronted with the witnesses against him or her

NO — Section 11 (k) to have compulsory process for obtaining witnesses in his or her favour

12. Section 12

NO — Change the words "cruel and unusual" to "cruel, inhuman, or degrading", taken from the UN Covenant.

PROPOSED NDP AMENDMENTS CONT....13. Section 14

Change to "Every person has the right to the assistance of an interpreter in any proceedings before a court, tribunal, commission, board or other authority in which the person is involved or is a party or witness if he or she does not understand or speak the language in which the proceedings are conducted, or is subject to a hearing impairment."

14. Section 15

This section should be strengthened as follows:

Subsection (1) "Every person is equal in, before and under the law and has the right to the 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."

Subsection (2) Sex, race, colour, religion, and national or ethnic origin shall never constitute a reasonable distinction, for the purposes of subsection (1).

Subsection (3) "Subsection 1 does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged groups including those that are disadvantaged because of the grounds specified therein."

FURTHER AMENDMENTS TO THE CHARTER OF RIGHTS WILL ALSO BE TABLED.