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CONFIDENTIAL

FEDERAL-PROVINCIAL CONFERENCE

OF

FIRST MINISTERS ON THE CONSTITUTION

Charter of Rights and Freedoms

Commentary on Revised Discussion Draft

September 3, 1980

FEDERAL

Ottawa
September 8-12, 1980

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CHARTER OF RIGHTS AND FREEDOMS

Commentary on Revised Discussion Draft, September 3, 1980.

The revised discussion draft contains the following changes from the August 22, 1980 draft, tabled at the August 25, 1980 CCMC meeting:

Modifications

Section 1 - The Canadian Charter of Rights and Freedoms recognizes the following rights and freedoms subject only to such reasonable limits as are generally accepted in a free and democratic society.

has been changed to:

> The Canadian Charter of Rights and Freedoms recognizes the following 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.

Section 6 - Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except by due process of law.

has been changed to:

> Everyone has the right to life, liberty and security of the person and right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 12 - A witness has the right when compelled to testify not to have any evidence so given used against him or her in any subsequent proceedings, except a prosecution for perjury or the giving of contradictory evidence.

has been changed to:

> A witness has the right when compelled to testify not to have any evidence so given used to incriminate him or her in any subsequent proceedings, except a prosecution for perjury or for the giving of contradictory evidence.

Section 14 - (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident has the right

(a) to move to and take up residence in any province; and

(b) to acquire and hold property in, and to pursue the gaining of a livelihood in any province.

(3) The rights specified in subsection (2) are subject to any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence.

has been changed to:

(1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Everyone in Canada has the right

(a) to move to and take up residence in any province; and

(b) to acquire and hold property in, and to pursue the gaining of a livelihood in any province.

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence, and

(b) any other laws referred to in sub-sections (4) or (5) of section 121 of the British North America Act.

Section 23 - The enumeration in this Charter of certain rights and freedoms shall not be construed to exclude, or to derogate from, any other rights or freedoms that may exist in Canada, including any rights or freedoms that may pertain to the native peoples of Canada.

has been changed to:

The enumeration in this Charter of certain rights and freedoms shall not be construed to deny the existence of any other rights or freedoms that may exist in Canada, including any rights or freedoms that may pertain to the native peoples of Canada.

Section 24 - Any law, order, regulation or rule that authorizes, forbids or regulates any activity or conduct in a manner inconsistent with this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

has been changed to:

Any law, order, regulation or rule that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

Deletions

Everyone has the right to be secure against arbitrary invasion of privacy.

A witness has the right not to be compelled to testify if denied the right to consult counsel.

Where no other legal resource or remedy is available, anyone whose rights or freedoms as declared by this Charter have been infringed or denied to his or her detriment has the right to apply to a court of competent jurisdiction to obtain relief or remedy by way of declaration, injunction, damages or penalty, as may be appropriate and just in the circumstances.

Additions

Section 25 - No provision of this Charter other than section 12 affects the laws respecting the admissibility of evidence in any proceedings or the authority of Parliament or a legislature to make laws in relation thereto.