

stitution

- 2) Mr. D. Lewis
- 4) Mr. Korchinski

Convention.

- 1) Mr. Korchinski
- 3) Mr. Hees
- 5) Mr. Nickerson
- 7) Mr. Mayer
- 8) Mr. Dantzer
- 9) Mr. McKenzie
- 6) Mr. Keeper
- 10) Mr. Riis

- 3) Miss MacDonald
- 4) Mr. Elzinga
- 6) Mr. Gass
- 8) Mr. Stewart
- 9) Mr. Vankoughnet
- 1) Mr. Riis
- 7) Mr. Young

27

8

Speakers beginning with Mr. Joyal are amendment.

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Federal-Provincial
Relations Office

Bureau des relations
fédérales-provinciales

The day you were
away - Mr. Chretien
mentioned he had another
discussion with Mr.

McHraith - who will
probably make an amend-
ment regarding his
difficulties with imposing
equality rights on the provs. →

I understand if Sen. Fritth
has a letter from the P.C.'s.

March 4, 1981

HOUSE OF COMMONS

Issue No.	Date	Government	P.C.	N.D.P.
144	17/02 Tues.	1) Mr. Chretien 4) Mr. Mackasey	2) Mr. Epp 5) Mr. Howie 6) Mr. Neil 7) Mr. Wenman	3) Mr. Broadbent
145	18/02 Wed.	2) Hon. J. Roberts 4) Mr. D. Dawson	1) Mr. Wenman (cont'd) 3) Hon. D. Crombie	5) Mr. Ittinuar
146	19/02 Thurs.	1) Mr. S. Joyal* 3) Mr. Hopkins	2) Mr. J. McGrath 4) Mr. Gurbin 6) Mr. Friesen	5) Mr. Manly
147	20/02 Fri.	2) Hon. J. Munro 4) Mr. D. Berger	1) Mr. B. Friesen (cont'd) 3) Mr. W. McLean 5) Mr. L. Crouse 6) Mr. Paposki 7) Mr. A. Hamilton	
148	23/02 Mon.	2) Ms. Hervieux-Payette 4) Mr. Peterson	1) Mr. Hamilton (cont'd) 3) Mr. Clark 5) Mr. Jelinek 6) Mr. Blenkarn	7) Mr. Robinson
149	24/02 Tues.	Opposition Day: No Debate on Constitution		
150	25/02 Wed.	No Debate on Constitution		
151	26/02 Thurs.	1) Mr. M. Dionne 3) Mr. G. Parent	2) Mr. D. Lewis 4) Mr. Korchinski	
	27/02 Fri.	No session: P.C. Convention.		
152	2/03 Mon.	2) Mr. G. Regan 4) Mme E. Côté	1) Mr. Korchinski (cont'd) 3) Mr. Hees 5) Mr. Nickerson 7) Mr. Mayer 8) Mr. Dantzer 9) Mr. McKenzie	6) Mr. Keeper 10) Mr. Riis
153	3/03 Tues.	2) Mr. Ferguson 5) Mr. Dingwall	3) Miss MacDonald 4) Mr. Elzinga 6) Mr. Gass 8) Mr. Stewart 9) Mr. Vankoughnet	1) Mr. Riis 7) Mr. Young
<u>TOTAL TO DATE</u>		16	27	8

* According to Hansard, Speakers beginning with Mr. Joyal are debating Mr. Epp's amendment.



Federal-Provincial
Relations Office

Bureau des relations
fédérales-provinciales

Re: Sen. McIlraith

Mr. Chétreïn may wish
to send the attached
to Senator McIlraith,
as follow-up to their
conversation on this
subject.

Barb
Darling

NOTES ON SECTION 15 - EQUALITY RIGHTS

THE ENTRENCHMENT OF EQUALITY RIGHTS -
FEDERAL-PROVINCIAL CONSIDERATIONS

Section 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.

Background

The list of grounds contained in Section 15 is non-exhaustive. This will enable the courts to develop new grounds for non-discrimination where it is established that the basis for distinction among people is not justified.

With the exception of "mental or physical disability" and "age" the equality rights in Section 15 have been confined to a core group of well recognized grounds for non-discrimination where the courts can fairly readily define the accepted limits. They are grounds that have been in the Canadian Bill of Rights since 1960, and are found in all provincial Human Rights legislation. The grounds originally proposed by the government did not include "mental or physical disability" and none of these original grounds would have entailed exceptional expenditures of funds to ensure equality.

Inclusion of "age" as one of the listed grounds was considered important to avoid some of the more invidious distinctions now drawn on that basis, such as mandatory retirement age.

Physical or mental disability was added when all parties agreed that this should be included in Section 15 during the Special Joint Committee hearings.

The non-discrimination rights will not become effective until three years after adoption of the Charter, in order to allow each level of government to review all existing legislation to ascertain where discriminatory provisions exist and to consider if they require amendment

to ensure that they will comply with the non-discrimination rights. Examples of laws requiring review at the federal level are pension legislation, defence legislation, income tax legislation and the Indian Act. At the provincial level, pension, taxation and insurance legislation will require review. In addition, all existing human rights laws will need to be reviewed to ensure that the non-discrimination provisions thereunder are consistent with Section 15.

The clause will provide for "affirmative action" programs to ensure that activities designed to promote equality for those who have been disadvantaged by past discrimination will be permitted. This is a provision now found in federal and provincial Human Rights Codes.

Comments

At present, equality rights vary from place to place in Canada. If there is one overriding element of unity in a federal state it should be the greatest possible measure of commonality in the recognition and protection of basic rights so that a person moving from one place to another will be assured equal treatment and protection wherever he may be.

Entrenching these rights would place restrictions on provincial legislatures' power to legislate contrary to protected rights, but it would equally limit the powers of Parliament.

No existing human rights law deals with anti-discrimination generally, with the exception of Quebec's Human Rights Charter. The other laws are confined to prohibiting discrimination only in specified areas such as employment, accommodation, and the provision of services to the public. They do not address the question of laws which discriminate in other areas such as immigration, social security, etc.

Some provinces have suggested that policy in this area is evolving and protection is better left to legislative response through human rights codes. However, codes do not provide constitutional guarantees. They can be changed by the ordinary exercise of majority vote by legislatures.

Along with legal rights, the non-discrimination area is one where people are in greatest need of protection from actions by government since abuses can be occasioned in so many ways, either intentionally or inadvertently. It is thus an area in which entrenched rights can serve both protective and educative roles.

In our federal system most fundamental rights and freedoms fall partly within federal jurisdiction and partly within provincial jurisdiction. Consequently, it is not very meaningful to tell citizens that, for example, they are protected against sexual discrimination under federal law, but that there is no similar guarantee insofar as provincial laws are concerned. Or, that federal employment laws that discriminate on the basis of handicap are invalid, but provincial laws permitting such discrimination are valid.

We must be aware of Canada's obligations under international law in this regard. The U.N. International Covenant on Civil and Political Rights to which Canada, with the agreement of the provinces, became a party in 1976, requires that all persons are to be equal before the law and to enjoy equal protection of the law without discrimination.

Our courts do not readily override the clearly expressed will of the legislators in matters of social policy. Furthermore, the courts have never said that any discrimination is objectionable. Only where it has no rational basis has it been struck down. In addition, if from time to time, the decisions of the courts are found to be unacceptable to the electorate, then they can be changed by constitutional amendment. Without entrenchment, rights can be changed by ordinary legislative enactment and our fundamental rights are too important to be treated in this manner.

Premier Blakeney's Objections to Section 15

"...of all the provisions in the Charter, it is this one which has the greatest direct impact on provincial programs and provincial jurisdiction. Section 15 represents exactly the sort of radical shift of governmental power which should be avoided under the present mode and timing of constitutional reform."

NOTE: Entrenchment of Equality Rights or any other right included in the Charter would involve no transfer of power from one level of government to the other. Rather it could place certain limitations on the powers of both federal and provincial legislatures and governments, in order to protect certain fundamental rights and freedoms of the individual that are recognized as essential in every advanced democracy.

"...the impact on provincial and federal legislation will be considerable. Although the exact extent of this impact is not yet clear, it seems clear that both levels of government will have to make extensive legislative amendments."

NOTE: The three year delay period is designed to ensure that governments will be able to review legislation and practices without forcing people to the expense of litigation in the meantime.

"...provinces in this area of constitutional reform have a particularly valuable contribution to make. Provincial governments have extensive experience in anti-discrimination legislation. This strongly suggests that provincial views on the general language and the classifications referred to in Section 15 would be highly beneficial."

NOTE: It is because the provincial governments have extensive experience in the non-discrimination field that entrenchment of equality rights seems appropriate. This is not a radical concept. All provinces have adopted anti-discrimination legislation and provincial laws are already subject to this legislation. Consequently, adjustments to be made to provincial laws under the Charter should not impose a great burden.

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Provincial views were requested during the summer months and during other rounds of constitutional negotiations. For the most part the views obtained were not constructive in that they recommended deleting the provision.

Gordon Barnett
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